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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 410 and 412

RIN 3206–AK75

Training; Supervisory, Management, and Executive Development

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations to implement certain training and development requirements contained in the Federal Workforce Flexibility Act of 2004 (Pub. L. 108–411) and to make other revisions in OPM regulations. The Act makes several significant changes in the law governing the training and development of Federal employees, supervisors, managers, and executives. The first change requires each agency to: evaluate, on a regular basis, its training programs and plans with respect to the accomplishment of its specific performance plans and strategic goals, and modify its training plans and programs as needed to accomplish the agency's performance plans and strategic goals. Public Law 108–411 requires agencies to consult with OPM to establish comprehensive management succession programs designed to provide training to employees to develop managers for the agency. It also requires agencies, in consultation with OPM, to establish programs to provide training to managers regarding actions, options, and strategies a manager may use in relating to employees with unacceptable performance, mentoring employees, improving employee performance and productivity, and conducting employee performance appraisals. Another change we are including, not related to the Act, is the removal of the extension for submitting training data. This change is the result of a policy decision by OPM as the extension request is no longer valid—requests were only granted up to December 2007.

DATES: *Effective Date:* December 10, 2009.

FOR FURTHER INFORMATION CONTACT: Cheryl Ndunguru at (202) 606–4063 or *cheryl.ndunguru@opm.gov,* or Julie Brill at (202) 606–5067 or *Julie.Brill@opm.gov*.

SUPPLEMENTARY INFORMATION: OPM published proposed regulations to make changes in parts 410 and 412 on September 2, 2008 (73 FR 51248). We received comments from 12 agencies and 1 union. Many commenters were supportive of the changes, but there were substantial questions and comments about requirements for supervisory training, succession management, SES candidate development programs and executive development plans.

Comments

General Issues

One commenter expressed concern about the ability to fully carry out the proposed requirements identified in parts 410 and 412 due to the lack of both financial and human resources. OPM understands the budgetary constraints some agencies are under, but the requirements are in law. OPM will work with agencies to help them reduce their costs of compliance to the extent possible.

Another commenter suggested that additional regulations are necessary to comply with section 1103 of title 5, United States Code, because nothing within proposed parts 410 or 412 holds agency managers or human resources leaders accountable for effective human resources management. We disagree. Section 1304 of the Chief Human Capital Officers (CHCO) Act authorizes OPM to develop an assessment system, including standards and metrics, for agency human resources management. OPM published regulations at 5 CFR part 250, subpart B (73 FR 23012) on April 28, 2008, which set forth new OPM and agency responsibilities and requirements to enhance and improve the strategic management of the Federal Government's civilian workforce, as well as the planning and evaluation of agency efforts in that regard. Those regulations establish the framework for OPM's leadership in holding agencies accountable for efficient and effective human resources management in accordance with merit system principles.

One commenter contended the proposed regulations go beyond the purpose and scope of the training provisions of the Federal Workforce Flexibility Act but did not specify in what way. The commenter suggested OPM convene a working group of agency training officials to determine the need for and benefits from any additional changes to 5 CFR parts 410 and 412. In addition to requirements in the Workforce Flexibility Act, OPM has general regulatory authority over training. In exercising that authority, OPM has consulted with agencies on changes to the regulation outside those specified in the Workforce Flexibilities Act (but within OPM's general authority) prior to publishing the proposed regulations. We have incorporated that feedback into the regulation.

One commenter observed the preamble to the proposed regulation indicates changes were made to subpart C of part 410 pertaining to Continued Service Agreements (CSAs), but the proposed rule does not include any changes. The commenter was correct—the statement in the preamble was an error. OPM did not propose any changes to subpart C. Another commenter indicated ''something is wrong with the wording in the third-to-last sentence'' of § 412.302(a) but did not indicate what was wrong. Upon reviewing the language, we determined the sentence required clarification and changed the wording to read, ''The ERB also must oversee development, evaluation, progress in the program, and graduation of candidates, and submit for QRB review within 90 workdays of graduation those candidates determined by the ERB to possess the executive core qualifications.''

Part 410

Training

One commenter recommended proposed § 410.201(d)(4) be set forth as a separate paragraph (e), and the language of this provision be revised because, as currently written, the language implies agencies will be required to conduct annual assessments of mission-critical occupations and

competencies, competency gaps and strategies to close competency gaps. The commenter believes this is a resource-intensive process that adds little value. Another commenter contended that while reviewing the overall curriculum on an annual basis is prudent, a full and thorough review of every program on a yearly basis would not be cost-effective. This commenter recommends changing this requirement to every 3 years. We believe § 410.201(d)(4) simply makes explicit obligations already imposed under Executive Order 11348 to perform periodic reviews of the overall program, at least annually. Executive Order 11348 requires every agency head to establish training programs in accordance with chapter 41 of Title 5 of the United States Code. Section 303 of E.O. 11348 requires that each agency head shall ''[r]eview periodically, but not less often than annually, the agency's program to identify training needed to bring about more effective performance at the least possible cost.'' The Federal Workforce Flexibility Act of 2004 modified 5 U.S.C. 4103 to add a statutory requirement that the head of each agency regularly evaluate and modify training programs under chapter 41. Section 410.201(d)(4) of title 5, Code of Federal Regulations, references the plan or program an agency has established to identify the training needs within that agency, and requires an annual review, consistent with section 303 of E.O. 11348. The annual review is important, because it provides timely feedback on agency training programs and permits adjustments to meet changing agency mission and performance goals. The requirement of an annual review ensures that agencies take account of relevant developments and make timely adjustments. The requirement is also consistent with the requirement of the Human Capital Management Report as described in 5 CFR 250.203. To ensure the meaning of § 410.201(d)(4) is clear, we have added language to emphasize the annual assessment is of the overall agency talent management program.

Part 412

Succession Planning

Multiple commenters expressed confusion about the meaning of ''in consultation with OPM'' in § 412.201 which specifies that the head of each agency must develop a comprehensive management succession program. One commenter requested feedback on OPM's role in the approval process and on issuance of guidance related to succession management programs. Currently, OPM has the responsibility to review and provide feedback on agency succession management plans. OPM will use a variety of mechanisms, including the CHCO Council, the Human Resources Directors' Forum, and OPM's Human Capital Officers to assist agencies in developing plans and strategies to meet the requirements of 5 U.S.C. 4121 and 5 CFR part 250 for implementing management succession programs. In addition, OPM has provided, and will continue to provide, guidance to agencies on succession management including OPM's April 2009 *A Guide to the Strategic Leadership Succession Management Model,* available on the Chief Human Capital Officers Council Web site (*http://www.chcoc.gov*).

One commenter objected to § 412.201, arguing it includes strict requirements for succession planning that could potentially lead to pre-selection. We disagree that the regulatory requirements will encourage pre-selection and we emphasize that management succession programs must be administered in a manner consistent with the merit systems principles, which dictate fair and open competition for all Federal positions. We do not find this language includes strict requirements or differs from the requirements in the original legislation (*i.e.,* the Federal Workforce Flexibility Act of 2004; Pub. L. 108–411). The law states each agency shall establish ''a comprehensive management succession program to provide training to employees to develop managers for the agency.'' Section 412.201 explains agencies should ensure an adequate number of qualified candidates are developed for leadership positions and that the training and development programs should focus on building leadership capacity across the organization. OPM has modified the language of the regulation to emphasize these points.

Supervisory Training

Two commenters objected to the requirement for follow-up training for supervisors. Both commenters objected because they believe that the topics enumerated are unnecessarily restrictive, and that agencies should be given greater flexibility and discretion in establishing appropriate timeframes and topics for conducting such training, in accordance with the agency's particular budgetary and workforce needs. One commenter supported the training requirement but objected to the specific topics. This commenter also suggested multiple training delivery methods be allowed. The specific training topics for supervisors are specified in the Federal Workforce Flexibility Act of 2004, at 5 U.S.C. 4121(2), and the regulations were written to reflect the law. The effectiveness and efficiency of Government programs and services depend on well-trained managers. Mandatory supervisory training ensures managers receive training and will help develop effective managers who foster positive work environments that produce an efficient and responsive Government. Agencies have the discretion to offer training in addition to what is specified in the regulation based on individual needs. The proposed timeframe is reasonable and ensures managers receive appropriate training to supervise Federal employees. Lastly, the proposed regulation does not specify training delivery methods, thus leaving it to the discretion of the agency.

One commenter objected to the wording ''individual's potential'' in § 412.202(c), explaining that assessing an individual's potential in a valid manner is complex and administratively burdensome. This commenter recommends the language of proposed § 412.202(c) be amended to strike the phrase ''* * * and the individual's potential''. Another commenter was not clear on the meanings of ''critical career transitions'', ''results of assessments of the agency's needs'', and ''individual potential'' in § 412.202(c). OPM has revised the language to (1) explain critical career transitions, and (2) clarify that training should be consistent with assessments of the agency's and the individual's needs. The intent of § 412.202(c) is to convey the importance of ensuring employees moving into supervisory and managerial positions (critical career transitions) possess the skills and knowledge necessary to effectively manage people and carry out the work of the agency. Agencies can determine readiness by coupling an assessment of the agency's need and the individual's ability to meet those needs (individual's potential).

Senior Executive Service Candidate Development Programs (SESCDP)

One commenter proposed language be added to § 412.302 allowing agencies to use some leadership training taken within the year prior to commencing a CDP class as part of the required 80 hours of individual training. OPM declines to add this to the regulation. OPM has provided guidance about this issue, outlining acceptable training in a September 2009 memorandum to Human Resources Directors.

One commenter proposed the new regulations allow participants to use their position of record as a developmental assignment if it is new to

them and is outside the scope of their previous position. We disagree with this proposition. Allowing candidates to remain in their position of record for the developmental assignment does not go far enough in exposing potential executives to multiple points of view or in achieving the principal goal of the developmental assignment, which is to have the person gain a broader perspective of his/her agency and the Federal Government. To achieve a broader perspective requires experience in other areas of work and in various working relationships different from current and past assignments.

One commenter contended OPM's proposed language requiring participants to submit certification packages within 90 days of program completion is unrealistic given the number of participants many agencies have in the program and the numerous internal agency review processes before packages are submitted to OPM. The commenter suggested the regulation be revised to state certification packages must be submitted within 120 days of program completion. In addition, one commenter suggested OPM should require the Executive Resources Board (ERB) to submit Criterion ''B'' cases (candidates who successfully complete all SES Candidate Development Program activities) within 90 workdays, rather than 90 calendar days, to maintain consistency with submission requirements for Criterion ''A'' and ''C'' cases (those SES candidates, respectively, whose overall records demonstrate the knowledge, skills, and abilities needed to perform at the SES level, and whose professional/technical backgrounds make them particularly well-suited for the SES vacancy but who lack demonstrated experience in one or more of the Executive Core Qualifications). We agree with the commenters' recommendation for consistency and have revised § 412.302(a) accordingly. Revising the requirement to 90 workdays also meets the commenter's request to allow requests for certification to be within 120 days from graduation.

Two commenters contended § 412.302(b) should not require a one-for-one linkage to expected SES vacancies. One commenter suggested that, from a succession planning perspective, this linkage is often inadequate. It is not our intent to make a one-to-one linkage, and we have modified this section to read, ''The number of expected SES vacancies must be considered as one factor in determining the number of selected candidates.'' Agencies should develop and select candidates based upon a realistic assessment of anticipated vacancies and staffing plans. This assessment should take into account the number of positions the agency is likely to fill by other avenues (*e.g.,* reassignment, transfer or merit staffing).

One commenter suggested the requirement in § 412.302(b) to obtain approval from OPM to conduct an SES CDP should be streamlined and simple, honoring the guidelines agencies have set for their programs as long as they adhere to the minimum requirements as stipulated in the regulations. Approvals and re-approvals will be based upon a determination that the SESCDP meets requirements established in the regulations. OPM has provided, and will continue to provide, tools and guidance to help streamline the approval process and will continue to ensure the approval process is as efficient as possible.

Two commenters believed the proposed requirements in § 412.301 regarding re-approval of an SESCDP places an unnecessary burden on agencies, and certain aspects of the proposed regulations overly limit agencies in their ability to design and implement an effective SESCDP. One commenter requested OPM consider consulting with agencies about SESCDPs and sharing best practices among agencies in lieu of adding re-approval requirements to the regulation. Another commenter believed agencies should not have to seek re-approval unless significant changes are made to their program so the regulations should remain unchanged in this regard. Also, one commenter recommended we clarify in regulation that candidates' QRB certifications obtained within approved SESCDPs remain valid. We disagree with removing the re-approval requirement. Requiring OPM approval every 5 years ensures agency SESCDP alignment with succession plans and program currency and relevance. Agency changes in leadership and staff as well as new regulatory requirements also warrant a periodic program re-approval. Approvals and re-approvals will be based upon a determination that the SESCDP meets requirements established in the regulation. In addition, OPM currently and frequently consults with agencies on their SESCDPs and shares all information and best practices Governmentwide. Lastly, 5 CFR 317.502 removes time limits from any previously approved QRB certifications so any certifications obtained within an OPM-approved SESCDP remain valid.

One commenter objected to the omission of the third SES recruitment option for agencies to limit the recruitment pool to agency-wide only. This commenter believes an agency should have at least the option to limit recruitment to qualified individuals from within their own agency. We disagree. We removed the exception because OPM determined it is better to align the requirements for a CDP program with the requirements of 5 U.S.C. 3393, because successful completion of a CDP program and subsequent certification makes the candidate eligible for appointment to an SES position without further competition. Thus, requiring broad competition for entry into a CDP helps ensure excellence in the SES ranks.

One commenter strongly objected to the omission of current § 412.104(b) language stating ''[i]n recruiting, the agency, consistent with the merit system principles in 5 U.S.C. 2301(b)(1) and (2), takes into consideration the goal of achieving a diversified workforce.'' This commenter believes omission of this language sends a message to agencies that equal opportunities are no longer an OPM priority. We have reconsidered and have decided to reinstate the language in § 412.302(b).

While commenters supported the overall 4-month developmental assignment, several commenters raised concerns about it including at least one assignment of 90 continuous days. One commenter questioned the need for this assignment and suggested the 4-month assignment be comprised of one 60-day and 2 other assignments. The commenter indicated that such a structure would be more feasible and effective. Some saw the 90 continuous day minimum requirement as excessive and/or too restrictive. These commenters felt it could discourage smaller agencies from conducting SESCDPs because candidates could not be spared for extended periods and/or the restriction hindered flexibility. Another commenter felt allowing a 30-day assignment is too short to ensure meaningful development, so the minimum requirement should be 60 days. We disagree. OPM believes the 90-day requirement is necessary to ensure that candidates are exposed to executive level accountability and responsibility. These developmental assignments are meant to provide candidates the opportunity to influence peers and should be of sufficient length to bring about that result. However, agencies may supplement these requirements according to candidates' developmental needs.

One commenter suggested that referring to the Executive Core Qualifications (ECQs) in § 412.302(c)(2) limits potential executive education

programs that address the ECQs without specifically labeling them ECQs. The commenter recommended we reword the regulation to read ''executive leadership competencies'' instead of ECQs. We disagree. Nothing in this regulation requires executive education programs to label the competencies that are the subjects of their programs ECQs. Rather, the ECQs are clearly stated, and OPM explicitly defines the competencies needed to build a Federal corporate culture that strives for results, serves customers, and builds successful teams and coalitions within and outside the organization. The leadership competencies developed within any executive education programs can be easily linked to those identified within the ECQs, so reference to the ECQs in this section will remain.

One commenter saw no benefit in requiring the SESCDP to last between 12 and 24 months. The commenter felt this requirement undermines desirable flexibility and suggested we delete 5 CFR 412.302(a) and (c) from the final regulations. Two commenters also suggested the regulations allow for flexibilities for participants with extenuating circumstances preventing them from completing the program within 24 months. The program length should enable candidates to meet the overall requirements of the program to close developmental gaps. We agree flexibility should be allowed but believe less than 12 months is insufficient time to develop new strengths and close competency gaps. We have revised § 412.302(a) to require an SES CDP to last a minimum of 12 months but removed the requirement to last no more than 24 months.

Two commenters questioned several references in 5 CFR 412.302(c)(1)(iv) and (v). One commenter disagreed with the requirement the candidates must interact with a ''wide mix'' of senior Federal employees outside the agency and with ''senior non-Federal employees'' during the developmental program. This commenter suggests such components should be dictated in part by the needs and prior experience of the individual candidates. The other commenter asked if the intent is simply to interact throughout the program, not necessarily in a formal training environment. This commenter also requested ''wide mix'' be clarified with a specific percentage or by some other means. This requirement is intended to allow interaction between the candidates and other executives outside their own agency, and to increase candidates' experience in the broader context within which executives operate—not just within a formal training environment. Furthermore, the minimum standards are sufficiently broad so individual development plans can be tailored to meet each candidate's needs. OPM will not regulate a specific percentage or ratio to define ''wide mix'', but further guidance will be provided to agencies so they can determine whether or not their programs meet the requirement for broad interaction. Due to agency comments regarding interaction outside the candidate's department or agency, we have slightly revised § 412.302(c) by clarifying the reference to interaction with senior non-Federal employees to say, ''Interaction with senior employees outside the candidate's department or agency to foster a broader perspective.''

One commenter expressed confusion regarding § 412.301(a) and questioned whether or not this paragraph provides for delegation of SESCDP implementation, certification of ECQs, and selection to the SES by the OPM-certified agency. This paragraph does not delegate QRB certification to agencies. A QRB established by OPM pursuant to 5 U.S.C. 3393(c)(1) certifies attainment of ECQs and selection to the SES. A QRB must certify the ECQs of any SESCDP graduate to become eligible for noncompetitive initial career SES appointment.

One commenter suggested OPM strengthen § 412.301(a) to indicate successful completion of the SESCDP should be the sole basis for QRB certification of candidates and individual ECQ narratives should not be required. This commenter recommended OPM clarify, through regulation or guidance, the basic submission requirements for requesting QRB certification of a candidate who completes an SESCDP. We disagree with the recommendation that successful completion of the SESCDP be the sole basis for QRB certification. Successful completion of an SESCDP program and approval of graduates by the QRB is accomplished when the candidate demonstrates that he or she possesses all ECQs. Basic submission requirements for requesting QRB certification of a candidate who completes an SESCDP are currently prescribed through OPM guidance.

In reference to § 412.301(d), one commenter suggested agencies be allowed to establish programs covering only designated components and apply to OPM for approval on the components' behalf, rather than having components apply directly to OPM. We intended to increase an agency's options with this provision by allowing an agency to permit its component to innovate in this area without requiring a commitment of the agency's time and resources. We decline to narrow the options for components to come to OPM for approval.

One commenter suggested agencies define their policies in the SESCDP approved by OPM rather than charging ERBs with overseeing the writing and implementation of the removal policy. ERBs are required by law (5 U.S.C. 3393(b)) to oversee SES selections and OPM believes, therefore, that it is good policy to involve ERBs in the agency SESCDP policies as well.

One commenter supported the concept of the Senior Executive Service Development Plan (SESDP) but suggested OPM keep the standard terminology of Individual Development Plan (IDP). This commenter also expressed confusion surrounding the requirement that the SESDP address ''Federal Government leadership challenges crucial to the senior executive.'' Agencies may refer to the development plan any way they choose as long as the plan addresses the components put forth in regulation. Nevertheless, we understand SESDP could cause confusion with other development plans and have reworded the regulation accordingly. In addition, ''Federal Government leadership challenges'' refers to those challenges an executive encounters, thus requiring them to demonstrate the ECQs.

One commenter questioned whether or not the 80-hour formal training requires interagency participation. The purpose of the 80-hour formal training experience is to develop candidates' competencies in the ECQs. OPM has revised the language in § 412.302(c)(2) to clarify the nature of the training must be interagency and/or multi-sector and outside the candidate's department or agency. The terms ''interagency'' and ''multi-sector'' include State, local, and foreign governments as well as private-sector and non-profit organizations.

One commenter noted while executive-level responsibility in a developmental assignment would be appropriate in most instances, there may be candidates who have substantial executive-level experience but are limited to a single functional or program area. In these cases, instead of requiring an assignment to be at an executive-level, the commenter recommends OPM accept any assignment clearly outside of and different from the position of record as long as the assignment can be tied to the individual needs assessment and overall ECQs. While we agree there may be candidates who have some executive level experience in a single area, we disagree with the commenter's recommendation. Some work

experiences would not normally provide the depth and breadth of experience needed to enhance a candidate's executive qualifications. Requiring the developmental assignment to be at an executive level (even for those who have some executive level experience) will help achieve the goal of the developmental assignment—to have the candidate gain a broader and deeper perspective from the executive level on his/her agency and the Federal Government.

One commenter contended the requirement for a mentor is too broad to apply effectively. The commenter suggested the regulations focus on the basic requirement for candidates to have a mentor who is a member of the SES or is otherwise determined acceptable. The commenter noted in the past OPM has accepted mentors from outside of the Federal Government, and if that is still the practice, it should be specified in the regulations. The requirement for a mentor is worded broadly to allow greater flexibility in choosing the appropriate mentor to fit the candidate's needs. The mentor must be a member of the SES or someone the ERB believes has the knowledge and capacity to advise the candidate. This means the mentor can be from outside the Federal government. For the purposes of the program, the mentor would be able to help the candidate make connections, observe behaviors and outcomes, or who may get indirect feedback about the candidate's performance from others.

One commenter noted the regulations should indicate when the Memorandum of Understanding (MOU) must be submitted to OPM (*e.g.,* at the time of the candidate's entry into SESCDP or when certification is requested). The commenter also asked for clarification of whether the MOU needs to comply with provisions for details in chapter 33 of title 5, U.S. Code, and, if so, suggested this be specified. The MOU must be submitted after the candidate is selected and before the program begins. We have cited chapter 41 of title 5 because an SESCDP primarily and necessarily focuses on training and development, which must conform to the requirements of that chapter. Also, OPM will not add anything with respect to provisions for details in chapter 33 as agency counsels and budget officials are responsible for determining agency compliance with chapter 33 and other laws (*e.g.,* the Economy Act).

One commenter noted there is another definition of ''career-type'' dealing with conversions to SES appointment in § 317.304, and OPM should consider conforming amendments to make the definitions consistent. We are aware of the career-type definition in § 317.304. It applies to SES conversion, a very different situation from the SESCDP recruitment context addressed in these regulations. We opted not to reference § 317.304 in proposed part 412, subpart C, because that section does not specify how temporary, term and similar excepted service appointments relate to the definition of ''career-type''. Moreover, due to the SES conversion context § 317.306 treats only a specific kind of temporary or term appointment (*i.e.,* Limited Executive Assignments at GS–16, 17 and 18 in the former Executive Assignment System and excepted service appointments at comparable levels, rather than appointments at GS–15 and below). Agencies will need to address on a regular basis how to treat applicants with temporary, term and equivalent excepted service appointments at GS–15 and below. We therefore conclude the reference to 5 CFR 351.502(b) will be more helpful to agencies and have retained it in the final regulations without adding the additional reference.

Executive Development

Several commenters questioned the need to mandate Executive Development Plans (EDPs). One commenter objects to the requirement in the belief that it imposes an undue administrative and financial burden on agencies. One commenter suggested if EDPs must be required, they should be mandated for probationers only; another commenter is not clear on whether the new EDP is required only for career SES members or whether non-career SES members are included. Another commenter did not support the provisions that specifically structure the nature of the EDP and program and indicated the focus for the development plan should be on developmental/enhancing experiences of a strategic nature and not be focused primarily on the current work of the SES. The requirement for the EDP is based on extensive Governmentwide research and feedback from various agencies on the increased need for continuing executive development of all executives (career and non-career) within the Federal Government. Continued learning can occur without a major strain on resources but through on-the-job experiences, details, relationship-building, networking, peer learning, and formal and informal training opportunities. We agree with the suggestion the EDP not be based primarily on the current work of the SES member and have revised § 412.401(a)(3) accordingly.

One commenter asked whether OPM would dictate the format and content of the EDP and what procedures would be put in place to ascertain these are being established. OPM has provided an EDP template for agencies to use as a tool. However, the format and content of the EDP is at the agency's discretion. Agencies must develop specific procedures and accountability measures to ensure that executives are continually being developed and EDPs are regularly updated and utilized.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 410 and 412

Education, Government employees.

John Berry,
Director, Office of Personnel Management.

■ Accordingly, OPM is amending 5 CFR parts 410 and 412 as follows:

PART 410—TRAINING

■ 1. The authority citation for part 410 is revised to read as follows:

Authority: 5 U.S.C. 1103(c), 4101, *et seq.;* E.O. 11348, 3 CFR, 1967 Comp., p. 275.

■ 2. Revise the heading of subpart B to read as follows:

Subpart B—Planning and Evaluating Training

■ 3. Revise §§ 410.201 and 410.202 to read as follows:

§ 410.201 Responsibilities of the head of an agency.

Agency employee development plans and programs should be designed to build or support an agency workforce capable of achieving agency mission and performance goals and facilitating continuous improvement of employee and organizational performance. In developing strategies to train employees, heads of agencies or their designee(s), under section 4103 of title 5, United States Code, and Executive Order 11348, are required to:

(a) Establish, budget for, operate, maintain, and evaluate plans and programs for training agency employees by, in, and through Government or non-Government facilities, as appropriate;

(b) Establish policies governing employee training, including a statement of the alignment of employee training and development with agency strategic plans, the assignment of responsibility to ensure the training goals are achieved, and the delegation of training approval authority to the lowest appropriate level;

(c) Establish priorities for training employees and allocate resources according to those priorities; and

(d) Develop and maintain plans and programs that:

(1) Identify mission-critical occupations and competencies;

(2) Identify workforce competency gaps;

(3) Include strategies for closing competency gaps; and

(4) Assess periodically, but not less often than annually, the overall agency talent management program to identify training needs within the agency as required by section 303 of Executive Order 11348.

§ 410.202 Responsibilities for evaluating training.

Agencies must evaluate their training programs annually to determine how well such plans and programs contribute to mission accomplishment and meet organizational performance goals.

■ 4. Remove § 410.203 and redesignate § 410.204 as § 410.203.

■ 5. In § 410.701, remove paragraph (c) and redesignate paragraph (d) as paragraph (c).

■ 6. Remove subpart F and redesignate subpart G, consisting of § 410.701, as subpart F, consisting of § 410.601.

■ 7. Revise part 412 to read as follows:

PART 412—SUPERVISORY, MANAGEMENT, AND EXECUTIVE DEVELOPMENT

Subpart A—General Provisions

Sec.

Subpart B—Succession Planning

Subpart C—Senior Executive Service Candidate Development Programs

Subpart D—Executive Development

Authority: 5 U.S.C. 1103 (c)(2)(C), 3396, 3397, 4101 *et seq.*

Subpart A—General Provisions

§ 412.101 Coverage.

This part applies to all incumbents of, and candidates for, supervisory, managerial, and executive positions in the General Schedule, the Senior Executive Service (SES), or equivalent pay systems also covered by part 410 of this chapter.

§ 412.102 Purpose.

(a) This part implements for supervisors, managers, and executives the provisions of 5 U.S.C. chapter 41, related to training, and 5 U.S.C. 3396, related to the criteria for programs of systematic development of candidates for the SES and the continuing development of SES members.

(b) This part identifies a continuum of leadership development, starting with supervisory positions and proceeding through management and executive positions Governmentwide. For this reason, this part provides requirements by which agencies:

(1) Develop the competencies needed by supervisors, managers, and executives;

(2) Provide learning through continuing development and training in the context of succession planning; and

(3) Foster a broad agency and Governmentwide perspective to prepare individuals for advancement, thus supplying the agency and the Government with an adequate number of well-prepared and qualified candidates to fill leadership positions.

Subpart B—Succession Planning

§ 412.201 Management succession.

The head of each agency, in consultation with OPM, must develop a comprehensive management succession program, based on the agency's workforce succession plans, to fill agency supervisory and managerial positions. These programs must be supported by employee training and development programs. The focus of the program should be to develop managers as well as strengthen organizational capability, and to ensure an adequate number of well-prepared and qualified candidates for leadership positions. These programs must:

(a) Implement developmental training consistent with agency succession management plans;

(b) Provide continuing learning experiences throughout an employee's career, such as details, mentoring, coaching, learning groups, and projects. These experiences should provide broad knowledge and practical experience linked to OPM's Federal leadership competencies, as well as agency-identified, mission-related competencies, and should be consistent with the agency's succession management plan; and

(c) Include program evaluations pursuant to 5 CFR 410.202.

§ 412.202 Systematic training and development of supervisors, managers, and executives.

All agencies must provide for the development of individuals in supervisory, managerial and executive positions, as well as individuals whom the agency identifies as potential candidates for those positions, based on the agencies' succession plans. Agencies also must issue written policies to ensure they:

(a) Design and implement leadership development programs integrated with the employee development plans, programs, and strategies required by 5 CFR 410.201, and that foster a broad agency and Governmentwide perspective;

(b) Provide training within one year of an employee's initial appointment to a supervisory position and follow up periodically, but at least once every three years, by providing each supervisor and manager additional training on the use of appropriate actions, options, and strategies to:

(1) Mentor employees;

(2) Improve employee performance and productivity;

(3) Conduct employee performance appraisals in accordance with agency appraisal systems; and

(4) Identify and assist employees with unacceptable performance.

(c) Provide training when individuals make critical career transitions, for instance from non-supervisory to manager or from manager to executive. This training should be consistent with assessments of the agency's and the individual's needs.

Subpart C—Senior Executive Service Candidate Development Programs

§ 412.301 Obtaining approval to conduct a Senior Executive Service candidate development program (SESCDP).

(a) An SESCDP is an OPM-approved training program designed to develop the executive qualifications of employees with strong executive potential to qualify them for and authorize their initial career appointment in the SES. An agency conducting an SESCDP may submit program graduates for Qualifications Review Board (QRB) review of their executive qualifications under 5 CFR

317.502. A program graduate certified by a QRB may receive an initial career appointment without further competition to any SES position for which he or she meets the professional and technical qualifications requirements.

(b) An agency covered by subchapter II of chapter 31 of title 5, United States Code, may apply to OPM to conduct an SESCDP alone or on behalf of a group of agencies. (In this subpart, the term ''agency'' refers to either a single agency or a group of agencies acting in partnership under this subpart.) Any agency developing an SESCDP must submit a policy document describing its program methodologies to OPM for formal approval before implementing the SESCDP. An agency must seek OPM approval every five years thereafter, and must also consult OPM before implementing a change substantially altering how the SESCDP complies with the requirements of this regulation. An agency implementing an SESCDP without first obtaining formal approval may not submit graduates of the program for QRB review.

(c) An agency that obtained OPM approval under previous regulations must apply for re-approval in accordance with requirements in paragraph (b) and this subpart before initiating a new SESCDP. All existing SESCDP approvals expire within 2 years after publication of this regulation.

(d) An agency covered by subchapter II of chapter 31 of title 5, United States Code, may authorize a major agency component employing senior executives to apply directly to OPM for approval to conduct an SESCDP. Such an application from a component must be accompanied by the agency's written endorsement. To obtain approval, the component must meet the SESCDP requirements of this subpart independent of agency involvement.

(e) As always, agencies should be mindful of merit principles in carrying out their functions under this subpart.

§ 412.302 Criteria for a Senior Executive Service candidate development program (SESCDP).

(a) *Executive Resources Board requirements.* An agency's Executive Resources Board (ERB) must oversee the SESCDP. The ERB ensures the development program lasts a minimum of 12 months and includes substantive developmental experiences that should equip a successful candidate to accomplish Federal Government missions as a senior executive. The agency ERB must oversee and be accountable for SESCDP recruitment, merit staffing, and assessment. The agency ERB must ensure the program follows SES merit staffing provisions in 5 CFR 317.501, subject to the condition explained in § 412.302(d)(1) of this part. The ERB also must oversee development, evaluation, progress in the program, and graduation of candidates, and submit for QRB review within 90 workdays of graduation those candidates determined by the ERB to possess the executive core qualifications. The ERB must also oversee the writing and implementation of a removal policy for program candidates who do not make adequate progress.

(b) *Recruitment.* In recruiting, the agency, consistent with the merit system principles in 5 U.S.C. 2301 (b)(1) and (2), takes into consideration the goal of achieving a diversified workforce. Recruitment for the program is from all groups of qualified individuals within the civil service, or all groups of qualified individuals whether or not within the civil service. The number of expected SES vacancies must be considered as one factor in determining the number of selected candidates.

(c) *Senior Executive Service candidate development program requirements.* An SESCDP lasts a minimum of 12 months. To graduate, a candidate must accomplish the requirements of the program established by his or her agency. Each individual participating in an SESCDP must have:

(1) A documented development plan based upon a competency-based needs determination and approved by the agency ERB. The components of the development plan must:

(i) Address the executive core qualifications (ECQs);

(ii) Address Federal Government leadership challenges crucial to the senior executive;

(iii) Provide increased knowledge and understanding of the overall functioning of the agency, so the participant is prepared for a range of positions and responsibilities;

(iv) Include interaction with senior employees outside the candidate's department or agency to foster a broader perspective; and

(v) Have Governmentwide or multi-agency applicability in the nature and scope of the training;

(2) A formal interagency and/or multi-sector training experience lasting at least 80 hours that addresses the ECQs and their application to SES positions Governmentwide. The training experience must include interaction with senior employees outside the candidate's department or agency;

(3) A developmental assignment of at least 4 months of full-time service to include at least one assignment of 90 continuous days in a position other than, and substantially different from, the candidate's position of record. The assignment must include executive-level responsibility and differ from the candidate's current and past assignments in ways that broaden the candidate's experience, as well as challenge the candidate with respect to leadership competencies and the ECQs. Assignments need not be restricted to the agency, the Executive Branch, or the Federal Government, so long as they can be accomplished in compliance with applicable law and Federal and agency specific ethics regulations. The candidate is held accountable for organizational or agency results achieved during the assignment. If the assignment is in a non-Federal organization, the ERB must provide for adequate documentation of the individual's actions and accomplishments and must determine the assignment will contribute to development of the candidate's executive qualifications; and

(4) A mentor who is a member of the SES or is otherwise determined by the ERB to have the knowledge and capacity to advise the candidate, consistent with goals of the SESCDP. The mentor and the candidate are jointly responsible for a productive mentoring relationship; however, the agency must establish methods to assess these relationships and, if necessary, facilitate them or make appropriate changes in the interest of the candidate.

(d) An SESCDP is a training opportunity for which agencies must recruit consistent with merit system principles and paragraph (d)(1) of this section. An agency must provide procedures under which selections are made from among either all qualified persons or all qualified persons in the civil service. If selected, the individual participates in the agency's SESCDP.

(1) An individual who does not currently hold a career or career-type civil service appointment may only participate in an SESCDP by means of a Schedule B appointment authorized by 5 CFR 213.3202(j) to a full-time position created for developmental purposes connected with the SESCDP. Exercising its authority under § 302.101(c)(6) of this chapter, OPM hereby exempts these full-time positions created for developmental purposes connected with the SESCDP from the appointment procedures of part 302 of this chapter. Competition for these appointments must be conducted pursuant to SES merit staffing procedures at § 317.501 of this chapter, except agencies must follow the

principle of veterans' preference as far as administratively feasible, in accordance with § 302.101(c) of this chapter. Candidates serving under this Schedule B appointment may not be used to fill an agency's regular positions on a continuing basis.

(2) An individual who currently holds a career or career-type appointment in the civil service must be selected through SES merit staffing procedures at § 317.501 of this chapter. Subject to the approval of the agency in which the selectee is employed, such an individual may be selected for and participate in an SESCDP in any agency while serving in his or her position of record. The individual may continue to participate in the SESCDP upon moving to other civil service positions under career or career-type appointment, assuming the employing agency approves. An SESCDP competition does not satisfy the requirements of part 335 of this chapter and therefore does not provide an independent basis to appoint or promote a career or career-type appointee.

(3) A career or career-type appointee may participate in an SESCDP conducted by an agency other than his or her employing agency under such terms as are mutually agreeable and outlined in a Memorandum of Understanding (MOU) signed by both agencies involved. The MOU should be submitted to OPM after the candidate is selected and before the program begins. Terms of the MOU must be consistent with applicable provisions of 5 U.S.C. chapter 41, and a copy must be provided to OPM. Either agency may decline or discontinue a candidate's participation if such terms cannot be negotiated or are not fulfilled.

(4) Any candidate's participation in an SESCDP is at the discretion of the employing agency and subject to provisions established under 5 CFR 412.302(a) for removing a participant who does not make adequate progress in the program.

(5) For purposes of this paragraph (d), a ''career-type'' appointment means a career or career-conditional appointment or an appointment of equivalent tenure. An appointment of equivalent tenure is considered to be an appointment in the excepted service that is placed in Group I or Group II under section 351.502(b).

Subpart D—Executive Development

§ 412.401 Continuing executive development.

(a) Each agency must establish a program or programs for the continuing development of its senior executives in accordance with 5 U.S.C 3396(a). Such agency programs must include preparation, implementation, and regular updating of an Executive Development Plan (EDP) for each senior executive. The EDPs will:

(1) Function as a detailed guide of developmental experiences to help SES members, through participation in short-term and longer-term experiences, meet organizational needs for leadership, managerial improvement, and organizational results;

(2) Address enhancement of existing executive competencies and such other competencies as will strengthen the executive's performance;

(3) Outline developmental opportunities and assignments to allow the individual to develop a broader perspective in the agency as well as Governmentwide; and

(4) Be reviewed annually and revised as appropriate by an ERB or similar body designated by the agency to oversee executive development, using input from the performance evaluation cycle.

(b) Consistent with 5 U.S.C. 3396(d) and other applicable statutes, EDPs may provide for executive sabbaticals and other long-term assignments outside the Federal sector.

[FR Doc. E9–29480 Filed 12–9–09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 948, 953, and 980

[Doc. No. AMS–FV–08–0018; FV08–980–1 FR]

Vegetable Import Regulations; Modification of Potato Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule modifies the import regulations for Irish potatoes by reducing the number of marketing order areas determined as being in the most direct competition with imported potatoes from five to three; exempting U.S. No. 1 grade potatoes imported in certain small containers from size requirements; and removing certain language from Marketing Orders No. 948 and 953 that reference the regulation of imported Irish potatoes. In addition, this rule makes minor administrative changes to the potato, onion, and tomato import regulations to update informational references. The modifications to the import regulations are expected to benefit potato importers and consumers.

DATES: *Effective Date:* January 11, 2010.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Barry.Broadbent@usda.gov* or *GaryD.Olson@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act'', which provides that whenever certain specified commodities, including potatoes produced in certain areas, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. The import regulations for vegetables issued under section 8e, which cover imports of Irish potatoes, onions, and tomatoes, are contained in 7 CFR part 980.

This final rule is also issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, and Marketing Agreement No. 104 and Marketing Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina). Both orders are effective under the Act.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any

handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Section 8e provides authority to regulate certain imported commodities whenever those same commodities are regulated by a domestic marketing order. Potatoes are one of the commodities specifically covered by section 8e in the Act. In addition, section 8e provides that whenever two or more such marketing orders regulating the same agricultural commodity produced in different areas are concurrently in effect, imports must comply with the provisions of the order which regulates the commodity produced in the area with which the imported commodity is in the ''most direct competition.'' Prior to this rule, five marketing orders were determined to be in most direct competition with Irish potato imports, varying by the type of potato and the shipping season. Section 980.1(a) reflected this determination.

This final rule modifies the Irish potato import regulations by reducing the number of domestic marketing order areas determined as being in the most direct competition with imported Irish potatoes from five to three. This final rule also exempts U.S. No. 1 grade potatoes that are imported in three-pound or less containers from any concurrent marketing order size requirements. Additionally, this final rule removes language contained in Marketing Orders No. 948 and 953 that becomes obsolete upon the implementation of this rule. Finally, this rule makes minor changes to update certain informational references contained in the Irish potato, onion, and tomato import regulations.

Prior to this action, five marketing orders were determined to be in most direct competition with imported Irish potatoes and acted as the basis for the establishment of minimum grade, size, quality, and maturity requirements for imported Irish potatoes, as set forth in the import regulations issued under section 8e. The marketing order areas that were previously determined to be in most direct competition were: Marketing Order No. 946 (Irish Potatoes Grown in Washington) for imports of red-skinned, round type potatoes during the period July through September; Marketing Order No. 948 (Area II) for imports of red-skinned, round type potatoes during the period October through the following June; Marketing Order No. 953 for imports of round white potatoes during the period June 5 through July 31; Marketing Order No. 948 (Area III) for imports of all other round type potatoes during the period August 1 through June 4 of the following year; and Marketing Order No. 945 for imports of long type potatoes during each month of the marketing year.

The previous determinations as to the areas in most direct competition needed to be updated to reflect current production trends. With this final rule, USDA is reducing the number of marketing orders determined to be in most direct competition with Irish potato imports from five to three: One for red-skinned, round type potatoes; one for all other varieties of round potatoes; and one for long type potatoes. Consequently, the import regulations for Irish potatoes (7 CFR 980.1) are revised by determining Marketing Order No. 946 as the production area in most direct competition with imports of red-skinned, round type potatoes through the entire year and Marketing Order No. 948 (Area II) as the production area in most direct competition with imports of all other round type potatoes through the entire year. Marketing Order No. 945 continues to be the area determined to be in most direct competition with imports of long type potatoes through the entire year.

Production trends in recent years justify the changes to the designation of the areas in most direct competition with imported potatoes. The production area for Irish potatoes grown in Washington, Marketing Order No. 946, has emerged as the clear domestic shipping leader for fresh packed red-skinned, round type potatoes, shipping more than three times the quantity as any other domestic area. Based on marketing order records for the years 2003–2007, the production area for Marketing Order No. 946 shipped an average of 1,370,410 hundredweight of red-skinned, round type, fresh packed potatoes. The next highest marketing order production area was the San Luis Valley of Colorado, covered by Marketing Order No. 948 (Area II). Based on marketing order statistics for the 2003–2007 period, the area shipped an average of 405,083 hundredweight of red-skinned, round type, fresh packed potatoes. Furthermore, handlers in the Marketing Order No. 946 production area shipped in all 12 months of the year.

The production area for Marketing Order 948 (Area II) does ship a larger volume of red-skinned, round type, fresh packed potatoes than Marketing Order 946 for a few months a year during its peak shipping season, but does not ship near the total quantity or for the length of time. Marketing Order 946, therefore, is established as the marketing order area in most direct competition year round due to its dominance in total shipping volumes and year round availability.

Establishing one marketing order as the area in most direct competition for red-skinned, round type potatoes more accurately reflects current production trends and simplifies the process for importers by having the same regulations established on a year round basis. As such, USDA has determined that, based on recent shipment statistics, Marketing Order No. 946 is the area in most direct competition with imports of red-skinned, round type potatoes for the entire year.

Likewise, the production area for Irish potatoes grown in the San Luis Valley of Colorado, Marketing Order No. 948 (Area II), has become the predominant domestic shipping area of all other round type, fresh packed potatoes, shipping more than double the quantity as any other area. Based on marketing order statistics for the years 2003–2007, the production area for Marketing Order No. 948 (Area II) shipped an annual average of 1,671,810 hundredweight of all other round type, fresh packed potatoes. In addition, handlers in Area II shipped all other round type potatoes in all 12 months of the year. Following Colorado Area II in the quantity handled of all other round type, fresh potatoes was the Marketing Order No. 946 production area, where an annual average of 778,400 hundredweight was shipped during this four year period.

Prior to this action, USDA had determined that the production areas for Marketing Orders No. 948 (Area III) and No. 953 were in most direct competition with imports of all other round type potatoes during certain periods of the year and were designated as such in the import regulations. However, these production areas no longer ship fresh Irish potatoes in quantities that warrant the continuation of such a designation.

Marketing order committee statistics show that handlers in the production area for Marketing Order No. 948 (Area III) shipped an annual average of 203,115 hundredweight of all other round type, fresh potatoes for the years 2003–2007, or approximately 12 percent of the amount shipped by the leading shipping area. Similarly, based on marketing order committee statistics, handlers in the production area for Marketing Order No. 953 shipped an annual average of 303,558 hundredweight of all other round type, fresh potatoes during the years 2005–2007, which is approximately 18 percent of the amount shipped by the leading shipping area.

Marketing Order 946 does ship a large volume of other round type, fresh packed potatoes during a few months a year during its peak shipping season. However, Marketing Order 948 (Area II) is established as the marketing order area in most direct competition with potato imports year round due to the area's dominance in total yearly shipping volumes and year round availability. Establishing one marketing order as the order in most direct competition for other round type potatoes more accurately reflects current production trends and will simplify the process for importers by having consistent regulations for those type potatoes established on a year round basis. Consequently, USDA has determined that, based on recent shipment statistics, Marketing Order No. 948 (Area II) is the area in most direct competition with imports of all other round type potatoes for the entire year.

The production area for Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, covered by Marketing Order No. 945, has been, and is expected to continue to be, the production and shipping leader for long type potatoes. As such, the determination of the area in most direct competition with long type Irish potato imports as currently contained in the import regulations continues unchanged.

This final rule also exempts U.S. No. 1 grade potatoes of any type imported in 3 pound or less containers from the size requirements otherwise specified in the potato import regulations. Marketing Order No. 946, which covers potato production in the state of Washington, contains this exemption in its handling regulation. Washington is the only domestic potato production area to ship U.S. No. 1 grade potatoes in 3 pound or less containers without regard to size. However, they are marketed throughout the year. Therefore, the exemption from size requirements for imported potatoes in 3 pound or less containers is based upon the regulation established under Marketing Order 946 for the entire year. This change will allow importers to import potatoes under comparable regulation.

Additionally, as a result of the changes delineated above, this final rule removes §§ 948.387(h) and 953.322(g) from their respective marketing orders. These paragraphs, specifically addressing ''Applicability to imports'', are no longer relevant given the changes in the determination of areas in most direct competition with imported potatoes.

Marketing Orders No. 948 (Area III) and No. 953 continue to be viable marketing orders in providing for the orderly marketing of Irish potatoes in the respective production areas. This action has no direct bearing on the operation of those programs. The changes in the determination simply means that those marketing orders will no longer be used as a basis for establishing Irish potato import requirements and, as such, any language in those marketing orders that link the orders to the potato import regulations is obsolete.

Lastly, this rule makes minor changes to certain reference information included in the import regulations covering potatoes, onions, and tomatoes that either require updating or have become obsolete since the subpart was last amended. Specifically, the designation of governmental inspection services are amended to reflect agency name changes, references to certain Code of Federal Regulations citation numbers are updated to acknowledge changes, and other outdated address information is brought current.

USDA believes that the modifications specified above will streamline the import regulations that potato importers are subject to. It is expected that these changes will benefit importers of Irish potatoes and consumers.

Final Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Small agricultural producers are defined as those whose annual receipts are less than $750,000, and small agricultural service firms, including potato importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000. There are approximately 255 importers of all types of potatoes who are subject to regulation under the Act. The majority of potato importers may be classified as small entities.

This final rule modifies the import regulations for Irish potatoes (7 CFR 980.1) by reducing the number of areas designated as being in most direct competition with Irish potato imports from five to three to reflect changes in domestic production trends. This final rule designates Marketing Order No. 946 as the sole production area in most direct competition with imports of red-skinned, round type potatoes, whereas the previous determination was that both Marketing Orders No. 946 and No. 948 (Area II) were the areas in most direct competition during certain specific periods of the year. This final rule also designates Marketing Order No. 948 (Area II) as the production area in most direct competition with imports of all other round type potatoes, whereas the previous determination was that Marketing Orders No. 948 (Area III) and No. 953 were the areas in most direct competition during certain specific periods of the year.

Section 8e of the Act provides authority for the regulation of imported Irish potatoes, whenever similar type potatoes are regulated by a domestic marketing order. In addition, section 8e provides that whenever two or more such marketing orders regulating the same agricultural commodity produced in different areas are concurrently in effect, imports must comply with the provisions of the marketing order which regulates the commodity produced in the area with which the imported commodity is in the ''most direct competition.''

Prior to this action, the Irish potato import regulations required importers to comply with the grade, size, quality, and maturity requirements of five marketing orders (Marketing Orders No. 945, No. 946, No. 948 (Area II and Area III), and No. 953) depending on the type of potato and the time period when shipped. This final rule reduces that number to three by eliminating Marketing Orders No. 948 (Area III) and No. 953 from the determinations in § 980.1(a). With this action, Marketing Order No. 946 is determined as the area

in most direct competition with imports of red-skinned, round type potatoes, and Marketing Order No. 948 (Area II) is determined as the area in most direct competition with imports of all other round type potatoes. Marketing Order No. 945 continues as the area determined to be in most direct competition with imports of all long type potatoes.

Designating just three marketing orders as being generally in most direct competition with imported potatoes of similar type more accurately reflects current domestic production trends. Statistics from recent years show that the production area of Marketing Order No. 946 (Irish potatoes grown in Washington) has emerged as the clear leader in the production of red-skinned, round type potatoes, nearly tripling the next largest production area (Marketing Order No. 948 (Area II)). Likewise, the production area of Marketing Order No. 948 (Area II) (Irish potatoes grown in the San Luis Valley of Colorado) has become the production leader of all other round type potatoes, producing over twice the quantity of these type potatoes than the next largest domestic producing region (Marketing Order No. 946). The production area for Marketing Order No. 945 (Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon) continues to be the production leader of long type potatoes.

This final rule also exempts U.S. No. 1 grade potatoes of any type imported in 3 pound or less containers from the size requirements otherwise specified in the potato import regulations. Marketing Order No. 946, which covers the only domestic potato production area that ships such potatoes, currently contains this exemption. However, they are marketed throughout the year. Therefore, the exemption from size requirements for imported potatoes in 3 pound or less containers should be based upon the regulation established under Marketing Order No. 946 for the entire year. This change allows importers to import potatoes under comparable regulation.

Additionally, as a result of the changes to the import regulations delineated above, this rule removes §§ 948.387(h) and 953.322(g) from the respective marketing orders. These paragraphs, specifically addressing ''Applicability to imports,'' are no longer be necessary after the determination of areas in most direct competition with imported potatoes are modified.

Lastly, this final rule makes minor changes to certain informational references included in the import regulations covering potatoes, onions, and tomatoes that require updating since the subpart was last amended. Specifically, the designation of the governmental inspection service is amended to reflect agency name changes, references to certain Code of Federal Regulations citation numbers are updated to acknowledge changes, and outdated address information is brought current.

In most cases, the changes to the potato import regulations constitute a relaxation of the regulatory requirements that potato imports are subject to. In all other cases, this action represents a continuation of the current regulatory requirements. Therefore, the changes enacted by this final rule either maintain or reduce the regulatory burden on potato importers.

Imports of red-skinned, round type potatoes, previously subject to the requirements of Marketing Orders No. 946 and 948 (Area II), will now only be subject to the requirements of Marketing Order No. 946. The minimum size requirements in Marketing Order No. 946 are less restrictive than the size requirements in Marketing Order No. 948 (Area II).

Likewise, imports of all other round type potatoes, previously subject to the requirements of Marketing Orders No. 948 (Area III) and 953, will now only be subject to the requirements of Marketing Order No. 948 (Area II). The minimum size requirements in Marketing Order No. 948 (Area II) are less restrictive than the requirements of both Marketing Orders No. 948 (Area III) and 953.

Exempting U.S. No. 1 grade potatoes handled in 3 pound or less containers from size requirements is also considered a relaxation of the current regulations.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large potato importers. As with all Federal marketing order programs and corresponding import regulations, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

A proposed rule concerning this action was published in the **Federal Register** on May 29, 2009 (74 FR 25678). The rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending July 28, 2009, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

■ For the reasons set forth in the preamble, 7 CFR parts 948, 953, and 980 are amended as follows:

■ 1. The authority citation for 7 CFR part 948, 953, and 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 2. In § 948.387, paragraph (h) is removed.

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

■ 3. In § 953.322, paragraph (g) is removed.

PART 980—VEGETABLES; IMPORT REGULATIONS

■ 4. In § 980.1, paragraphs (a)(2)(i), (a)(2)(ii), (b)(1), (b)(2), and (j) are revised to read as follows:

§ 980.1 Import regulations; Irish potatoes.

(a) * * *

(2) * * *

(i) Imports of red-skinned, round type potatoes during each month of the marketing year are in most direct competition with potatoes of the same type produced in the area covered by Marketing Order No. 946 (part 946 of this chapter).

(ii) Imports of all other round type potatoes during each month of the marketing year are in most direct competition with potatoes of the same type produced in Area 2, Colorado (San Luis Valley) covered by Marketing Order No. 948, as amended (part 948 of this chapter).

* * * * *

(b) * * *

(1) Through the entire year, the grade, size, quality, and maturity requirements of Marketing Order No. 946, as amended (part 946 of this chapter), applicable to potatoes of the red-skinned, round type shall be the respective grade, size, quality, and maturity requirements for all imported red-skinned, round type potatoes.

(2) Through the entire year, the grade, size, quality, and maturity requirements of Area II, Colorado (San Luis Valley) covered by Marketing Order No. 948, as amended (part 948 of this chapter), applicable to potatoes of the round type, other than red-skinned varieties, shall be the respective grade, size, quality, and maturity requirements for imports of all other round type potatoes.

* * * * *

(j) *Exemptions.* (1) The grade, size, quality and maturity requirements of this section shall not be applicable to potatoes imported for canning, freezing, other processing, livestock feed, charity, or relief, but such potatoes shall be subject to the safeguard provisions contained in § 980.501. Processing includes canning, freezing, dehydration, chips, shoestrings, starch and flour. Processing does not include potatoes that are only peeled, or cooled, sliced, diced, or treated to prevent oxidation, or made into fresh potato salad.

(2) There shall be no size requirements for potatoes that are imported in containers with a net weight of 3 pounds or less, if the potatoes are otherwise U.S. No. 1 grade or better.

■ 5. Amend § 980.117 as follows:

■ a. Revise paragraph (e) to read as set forth below;

■ b. Amend paragraph (f)(2) by removing the reference ''(7 CFR part 2851)'' and by adding in its place the reference ''(7 CFR part 51)''; and

■ c. Amend paragraph (h), by removing the references ''(7 CFR 2851.3195 through 2851.3209)'', ''(7 CFR 2851.3955 through 2851.3970)'' and ''(7 CFR 2851.3195 through 2851.3209)'' and by adding in their places the references ''(7 CFR 51.3195 through 51.3209)'', ''(7 CFR 51.3955 through 51.3970)'' and ''(7 CFR 51.3195 through 51.3209)'' respectively.

§ 980.117 Import regulations; onions.

* * * * *

(e) *Designation of governmental inspection service.* The Federal or Federal-State Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of onions that are imported, or to be imported, into the United States under the provisions of section 8e of the Act.

* * * * *

■ 6. Amend § 980.212 as follows:

■ a. Revise paragraph (e) to read as set forth below;

■ b. Amend paragraph (f)(2) by removing the reference ''(7 CFR 2851)'' and by adding in its place the reference ''(7 CFR 51)''; and

■ c. Amend paragraph (h) by removing the words ''(7 CFR 2851.1855 through 2851.1877; title 7, chapter I, part 51 was redesignated title 7, chapter 28, part 2851 on June 27, 1977)'' and by adding in their place the words ''(7 CFR 51.1855 through 51.1877).''

§ 980.212 Import regulations; tomatoes.

* * * * *

(e) *Designation of governmental inspection service.* The Federal or Federal-State Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of tomatoes that are imported, or to be imported, into the United States under the provisions of section 8e of the Act.

* * * * *

§ 980.501 [Amended]

■ 7. Amend § 980.501 as follows:

■ a. Amend paragraph (a)(4) by removing the words ''Fruit and Vegetable Division'' in the first and second sentences and by adding in their places the words ''Fruit and Vegetable Programs''; and

■ b. Amend paragraph (d) by removing the address ''Marketing Order Administration Branch, USDA, AMS, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone (202) 720–4607'' and by adding in its place the address ''Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237, telephone (202) 720–2491.''

Dated: December 1, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–29023 Filed 12–9–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM420; Notice No. 25–09–13–SC]

Special Conditions: Dassault Aviation Falcon Model 2000EX; Autobraking System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Dassault Aviation Falcon Model 2000EX airplane. This airplane will have a novel or unusual design features associated with the autobraking system for use during landing. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by January 25, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM420, 1601 Lind Avenue, SW., Renton, Washington,

98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM420. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Todd Martin, FAA, Airframe/Cabin Safety, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356; telephone (425) 227–1178; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On July 1, 2008, Dassault Aviation applied for a change to Type Certificate (TC) No. A50NM to install an automatic braking system in the Falcon Model 2000EX airplane. This is a pilot-selectable function that allows earlier maximum braking at landing without pilot pedal input. When the autobrake system is armed before landing, it automatically commands maximum braking at main wheels touchdown. Normal procedures remain unchanged and call for manual braking after nose wheel touchdown.

The current Federal Aviation Regulations do not contain adequate requirements to address the potentially higher structural loads that could result from this type of automatic braking system. Title 14, Code of Federal Regulations (14 CFR) 25.471 through 25.511 address ground handling loads, but do not contain a specific ''pitchover'' requirement addressing the loading on the nose gear, the nose gear surrounding structure, and the forward fuselage. The Dassault autobraking system, which applies maximum braking at the main wheels before the nose gear touches down, will cause a high nose gear sink rate, and potentially higher gear and airframe loads. Therefore, the FAA has determined that a special condition is needed. The special condition requires that the airplane be designed to withstand the loads resulting from maximum braking, taking into account the effects of the automatic braking system.

Type Certification Basis

Under the provisions of § 21.101, Dassault Aviation must show that the Falcon Model 2000EX, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in TC No. A50NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in TC No. A50NM are as follows:

Title 14 Code of Federal Regulations (14 CFR) part 25 as amended by Amendments 25–1 through 25–69. In addition, Dassault Aviation has elected to comply with the following amendments:

- Amendment 25–71 for § 25.365(e);
- Amendment 25–72 for §§ 25.783(g) and 25.177;
- Amendment 25–75 for § 25.729(e);
- Amendment 25–79 for § 25.811(e)(2);
- Amendment 25–80 for § 25.1316.

In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to this proposed special condition.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25) do not contain adequate or appropriate safety standards for the Falcon Model 2000EX because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Falcon Model 2000EX must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in §§ 11.19 and 11.38, and they become part of the type-certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Falcon Model 2000EX will incorporate the following novel or unusual design features:

The airplane will be equipped with an automatic braking system, which is a pilot-selectable function that allows earlier maximum braking at landing without pilot pedal input. When the autobrake system is armed before landing, it automatically commands maximum braking at main wheels touchdown. This will cause a high nose gear sink rate, and potentially higher gear and airframe loads than would occur with a traditional braking system. Therefore, the FAA has determined that a special condition is needed.

Discussion

The special condition defines a landing pitchover condition that takes into account the effects of the automatic braking system. The special condition defines the airplane configuration, speeds, and other parameters necessary to develop airframe and nose gear loads for this condition. The special condition requires that the airplane be designed to support the resulting limit and ultimate loads as defined in § 25.305.

Applicability

As discussed above, these special conditions are applicable to the Falcon Model 2000EX. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Condition

■ Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as part of the type certification basis for Dassault Aviation Falcon Model 2000EX airplanes.

Landing Pitchover Condition

A landing pitchover condition must be addressed that takes into account the effect of the autobrake system. The airplane is assumed to be at the design maximum landing weight, or at the maximum weight allowed with the autobrake system on. The airplane is assumed to land in a tail-down attitude and at the speeds defined in § 25.481. Following main gear contact, the airplane is assumed to rotate about the main gear wheels at the highest pitch rate allowed by the autobrake system. This is considered a limit load condition from which ultimate loads must also be determined. Loads must be determined for critical fuel and payload distributions and centers of gravity. Nose gear loads, as well as airframe loads, must be determined. The airplane must support these loads as described in § 25.305.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–29398 Filed 12–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1109; Directorate Identifier 2009–NM–068–AD; Amendment 39–16123; AD 2009–25–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–243 Airplanes and Model A330–341, –342, and –343 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An operator of A330 aeroplane fitted with Rolls-Royce (RR) Trent 772 B engines experienced an engine#1 uncontained multiple turbine blade failure. Investigations have shown that High Pressure/Intermediate Pressure (HP/IP) oil vent tubes are prone to be affected by carbon deposit or to be damaged by their outer heat shields leading to a fire inside or outside the vent tube and resulting into IP Turbine (IPT) disc drive arm fracture and thus IPT disc overspeed.

If not corrected, IPT disc overspeed could lead to an uncontained engine failure, i.e. multiple turbine blade failure or HP/IP turbine disc burst, which would constitute an unsafe condition.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective December 28, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 28, 2009.

We must receive comments on this AD by January 25, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0075, dated April 6, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

An operator of A330 aeroplane fitted with Rolls-Royce (RR) Trent 772 B engines experienced an engine#1 uncontained multiple turbine blade failure. Investigations have shown that High Pressure/Intermediate Pressure (HP/IP) oil vent tubes are prone to be affected by carbon deposit or to be damaged by their outer heat shields leading to a fire inside or outside the vent tube and resulting into IP Turbine (IPT) disc drive arm fracture and thus IPT disc overspeed.

If not corrected, IPT disc overspeed could lead to an uncontained engine failure, i.e. multiple turbine blade failure or HP/IP turbine disc burst, which would constitute an unsafe condition.

In order to protect IPT from overspeed, EASA AD 2008–0101 required to activate Intermediate Pressure Turbine Overspeed (IPTOS) protection function by Data Entry Plug (DEP) reprogramming, which consists in limiting the IPT speed (Engine Thrust) when overheat is detected in IPT, for all A330 aeroplanes fitted with RR Trent 700 engines and equipped with Multi Mode Receivers.

Original issue of AD 2008–0101 had a limited applicability due to Flight Warning Computer compatibility issue with aircraft not equipped with Multi Mode Receivers. Airbus has now developed a new Flight

Warning Computer standard T2 whose embodiment is also possible on A330 aeroplane fitted with RR Trent 700 engines not equipped with Multi Mode Receivers.

For the above described reasons, this AD retains the requirement of EASA AD 2008–0101, which is superseded, and extends the applicability to all A330 aeroplanes fitted with RR Trent 700 engines.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A330–73–3049, Revision 01, dated November 13, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a note within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1109; Directorate Identifier 2009–NM–068–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2009–25–04 Airbus: Amendment 39–16123. Docket No. FAA–2009–1109; Directorate Identifier 2009–NM–068–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–243, –341,–342, and –343 airplanes, all manufacturing serial numbers (MSN), except those on which Airbus Modification 56722 has been embodied in production.

Subject

(d) Air Transport Association (ATA) of America Code 73: Engine fuel and control.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

An operator of A330 aeroplane fitted with Rolls-Royce (RR) Trent 772 B engines experienced an engine #1 uncontained multiple turbine blade failure. Investigations have shown that High Pressure/Intermediate Pressure (HP/IP) oil vent tubes are prone to be affected by carbon deposit or to be damaged by their outer heat shields leading to a fire inside or outside the vent tube and resulting into IP Turbine (IPT) disc drive arm fracture and thus IPT disc overspeed.

If not corrected, IPT disc overspeed could lead to an uncontained engine failure, i.e. multiple turbine blade failure or HP/IP turbine disc burst, which would constitute an unsafe condition.

In order to protect IPT from overspeed, EASA AD 2008–0101 required to activate

Intermediate Pressure Turbine Overspeed (IPTOS) protection function by Data Entry Plug (DEP) reprogramming, which consists in limiting the IPT speed (Engine Thrust) when overheat is detected in IPT, for all A330 aeroplanes fitted with RR Trent 700 engines and equipped with Multi Mode Receivers.

Original issue of AD 2008–0101 had a limited applicability due to Flight Warning Computer compatibility issue with aircraft not equipped with Multi Mode Receivers. Airbus has now developed a new Flight Warning Computer standard T2 whose embodiment is also possible on A330 aeroplane fitted with RR Trent 700 engines not equipped with Multi Mode Receivers.

For the above described reasons, this AD retains the requirement of EASA AD 2008–0101, which is superseded, and extends the applicability to all A330 aeroplanes fitted with RR Trent 700 engines.

Actions and Compliance

(f) Unless already done, do the following actions: Within 12 months after the effective date of this AD, do the actions specified in paragraph (f)(1) of this AD.

(1) Reprogram the data entry plug on both engines to activate the intermediate pressure turbine overspeed protection function, including doing applicable revisions of the Airplane Flight Manual (AFM), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–73–3049, Revision 01, dated November 13, 2008.

Note 1: IPTOS function activation has the following operational consequences: Modification of the AFM and the flightcrew operating manual (FCOM). Accomplishment of the actions specified in Airbus Mandatory Service Bulletin A330–73–3049, Revision 01, dated November 13, 2008 (Airbus Modification 56722), cancels Airbus A330 AFM Supplement 6.03.08, dated June 2, 2006; and Volumes 1 and 3 (1.70.20, 1.70.95, and 3.02.70) of the Airbus A330 FCOM have been modified.

(2) Actions accomplished before the effective date of this AD in accordance with Airbus Mandatory Service Bulletin A330–73–3049, dated November 14, 2007, are considered acceptable for compliance with the corresponding action specified in paragraph (f)(1) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to Mandatory Continuing Airworthiness Information EASA Airworthiness Directive 2009–0075, dated April 6, 2009; and Airbus Mandatory Service Bulletin A330–73–3049, Revision 01, dated November 13, 2008; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A330–73–3049, Revision 01, dated November 13, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 23, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28858 Filed 12–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1114; Directorate Identifier 2009–NM–157–AD; Amendment 39–16134; AD 2007–10–10 R1]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD), which applies to all Airbus Model A300–600 series airplanes. That AD currently requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. This AD clarifies the intended effect of the AD on spare and on-airplane fuel tank system components. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors caused by latent failures, alterations, repairs, or maintenance actions, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective December 28, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 28, 2009.

On June 27, 2007 (72 FR 28827, May 23, 2007), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD.

We must receive any comments on this AD by January 25, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On May 7, 2007, we issued AD 2007–10–10, Amendment 39–15051 (72 FR 28827, May 23, 2007). That AD applied to all Airbus Model A300–600 series airplanes. That AD required revising the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Critical design configuration control limitations (CDCCLs) are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Actions Since AD Was Issued

Since we issued that AD, we have determined that it is necessary to clarify the AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

> No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory * * * procedures * * * have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the ALS. But once the CDCCLs are incorporated into the ALS, future maintenance actions on components must be done in accordance with those CDCCLs.

Relevant Service Information

AD 2007–10–10 cites Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05, Issue 1, dated December 19, 2005. Since we issued that AD, Airbus has revised the referenced service information and issued Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05, Issue 2, dated May 16, 2007. The revised service information clarifies the new limitations for fuel tank systems, but adds no new procedures. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

The affected products have been approved by the aviation authority of another country, and are approved for operation in the United States. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This new AD retains the requirements of the existing AD, and adds a new note to clarify the intended effect of the AD on spare and on-airplane fuel tank system components.

Costs of Compliance

This revision imposes no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

This AD affects about 138 airplanes of U.S. registry. The required actions take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $22,080, or $160 per airplane.

FAA's Justification and Determination of the Effective Date

This revision merely clarifies the intended effect on spare and on-airplane fuel tank system components, and makes no substantive change to the AD's requirements. For this reason, it is found that notice and opportunity for prior public comment for this action are unnecessary, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1114; Directorate Identifier 2009–NM–157–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15051 (72 FR 28827, May 23, 2007) and adding the following new AD:

AD 2007–10–10 R1 Airbus: Amendment 39–16134. Docket No. FAA–2009–1114; Directorate Identifier 2009–NM–157–AD.

Effective Date

(a) This airworthiness directive (AD) is effective December 28, 2009.

Affected ADs

(b) This AD revises AD 2007–10–10, Amendment 39–15051.

Applicability

(c) This AD applies to all Airbus Model A300–600 series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections and critical design configuration control limitations (CDCCLs). Compliance with the operator maintenance documents is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections and CDCCLs, the operator may not be able to accomplish the inspections and CDCCLs described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections and CDCCLs that will preserve the critical ignition source prevention feature of the affected fuel system.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors caused by latent failures, alterations, repairs, or maintenance actions, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2007–10–10, With Revised Service Information:

Revise Airworthiness Limitations Section (ALS) To Incorporate Fuel Maintenance and Inspection Tasks

(f) Within 3 months after June 27, 2007 (the effective date of AD 2007–10–10), revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A300–600 ALS Part 5—Fuel Airworthiness Limitations, dated May 31, 2006, as defined in Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05, Issue 1, dated December 19, 2005 (approved by the European Aviation Safety Agency (EASA) on March 13, 2006), Section 1, ''Maintenance/Inspection Tasks'' (hereafter referred to as Section 1 of Issue 1 of Document 95A.1929/05); or Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05, Issue 2, dated May 16, 2007, Section 1, ''Maintenance/Inspection Tasks'' (hereafter referred to as ''Section 1 of Issue 2 Document 95A.1929/05''). For all tasks identified in Section 1 of Issue 1 or Issue 2 of Document 95A.1929/05, the initial compliance times start from the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD, and the repetitive inspections must be accomplished thereafter at the intervals specified in Section 1 of Issue 1 or Issue 2 of Document 95A.1929/05, except as provided by paragraph (g) of this AD.

(1) June 27, 2007.

(2) The date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.

Note 2: Airbus Operator Information Telex (OIT) SE 999.0076/06, dated June 20, 2006, identifies the applicable sections of the Airbus A300–600 airplane maintenance manual necessary for accomplishing the tasks specified in Section 1 of Issue 1 or Issue 2 of Document 95A.1929/05.

Initial Compliance Time for Task 28–18–00–03–1

(g) For Task 28–18–00–03–1, ''Operational check of lo-level/underfull/calibration sensors,'' identified in Section 1 of Issue 1 or Issue 2 of Document 95A.1929/05: The initial compliance time is the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD. Thereafter, Task 28–18–00–03–1 must be accomplished at the repetitive interval specified in Issue 1 or Issue 2 of Document 95A.1929/05.

(1) Prior to the accumulation of 40,000 total flight hours.

(2) Within 72 months or 20,000 flight hours after June 27, 2007, whichever occurs first.

Revise ALS To Incorporate CDCCLs

(h) Within 12 months after June 27, 2007, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A300–600 ALS Part 5—Fuel Airworthiness Limitations, dated May 31, 2006, as defined in Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05, Issue 1, dated December 19, 2005 (approved by the EASA on March 13, 2006), Section 2, ''Critical Design Configuration Control Limitations''; or Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05, Issue 2, dated May 16, 2007, Section 2, ''Critical Design Configuration Control Limitations.''

No Alternative Inspections, Inspection Intervals, or CDCCLs

(i) Except as provided by paragraph (j) of this AD: After accomplishing the actions specified in paragraphs (f) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used.

New Information

Explanation of CDCCL Requirements

Note 3: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the ALS, as required by paragraphs (f) and (h) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the ALS has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures

found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Related Information

(k) European Aviation Safety Agency Airworthiness Directive 2006–0201, dated July 11, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use the applicable service information contained in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 1—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Issue	Date
Airbus A300–600 ALS Part 5—Fuel Airworthiness Limitations	Original	May 31, 2006.
Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05	1	December 19, 2005.
Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05	2	May 16, 2007.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 2 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2—NEW MATERIAL INCORPORATED BY REFERENCE

Document	Issue	Date
Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05	2	May 16, 2007.

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in Table 3 of this AD on June 27, 2007 (72 FR 28827, May 23, 2007).

TABLE 3—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Document	Issue	Date
Airbus A300–600 ALS Part 5—Fuel Airworthiness Limitations	Original	May 31, 2006.
Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05	1	December 19, 2005.

(3) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 2, 2009.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–29376 Filed 12–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1113; Directorate Identifier 2009–NM–238–AD; Amendment 39–16133; AD 2009–25–13]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model BD–100–1A10 (Challenger 300) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

There have been 3 reported occurrences of uncontrolled excessive heat from the left hand baggage bay sidewall heater, [part number] P/N 3436–06–1/0, that resulted in the affected sidewall heater panels sustaining heat discoloration and/or scorching of the liner material. The affected sidewall heater is equipped with a thermostat to regulate heating. These reported occurrences are the subject of further investigation. As a preventive measure, until such time as the cause of the occurrences have been determined, deactivation of the left hand baggage bay heater is necessary to avoid the potential for uncontrolled excessive heat by the heater panel, and on the baggage bay compartment, that could lead to flammability issues.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective December 28, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication as of December 28, 2009.

We must receive comments on this AD by January 25, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kyle Williams, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7347; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–38, dated October 15, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There have been 3 reported occurrences of uncontrolled excessive heat from the left hand baggage bay sidewall heater, [part number] P/N 3436–06–1/0, that resulted in the affected sidewall heater panels sustaining heat discoloration and/or scorching of the liner material. The affected sidewall heater is equipped with a thermostat to regulate heating. These reported occurrences are the subject of further investigation. As a preventive measure, until such time as the cause of the occurrences have been determined, deactivation of the left hand baggage bay heater is necessary to avoid the potential for uncontrolled excessive heat by the heater panel, and on the baggage bay compartment, that could lead to flammability issues.
>
> The affected left hand baggage bay sidewall heater, P/N 3436–06–1/0 is part of the Model BD–100–1A10 aeroplane interior installation approved under Transport Canada Supplemental Type Certificate SA04–112.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin A100–25–30, dated July 20, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because there have been three reported occurrences of uncontrolled excessive heat from the left-hand baggage bay sidewall heater, P/N 3436–06–1/0, that resulted in the affected sidewall heater panels sustaining heat discoloration or scorching of the liner material. The affected sidewall heater is equipped with a thermostat to regulate heating. There is high potential for uncontrolled excessive heating by the heater panel and on the baggage bay compartment, which could lead to flammability issues. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1113; Directorate Identifier 2009–NM–238–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on

the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2009–25–13 Bombardier, Inc. (Formerly Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited; British Aerospace (England)): Amendment 39–16133. Docket No. FAA–2009–1113; Directorate Identifier 2009–NM–238–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes, certificated in any category; equipped with sidewall heater having part number (P/N) 3436–06–1/0.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

There have been 3 reported occurrences of uncontrolled excessive heat from the left hand baggage bay sidewall heater, [part number] P/N 3436–06–1/0, that resulted in the affected sidewall heater panels sustaining heat discoloration and/or scorching of the liner material. The affected sidewall heater is equipped with a thermostat to regulate heating. These reported occurrences are the subject of further investigation. As a preventive measure, until such time as the cause of the occurrences have been determined, deactivation of the left hand baggage bay heater is necessary to avoid the potential for uncontrolled excessive heat by the heater panel, and on the baggage bay compartment, that could lead to flammability issues.

The affected left hand baggage bay sidewall heater, P/N 3436–06–1/0 is part of the Model BD–100–1A10 aeroplane interior installation approved under Transport Canada Supplemental Type Certificate SA04–112.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 100 flight hours after the effective date of this AD, deactivate the left-hand baggage bay sidewall heater having part number (P/N) 3436–06–1/0, in accordance with Bombardier Service Bulletin A100–25–30, dated July 20, 2009.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI Canadian Airworthiness Directive CF–2009–38, dated October 15, 2009; and Bombardier Service Bulletin A100–25–30, dated July 20, 2009; for related information.

Material Incorporated by Reference

(j) You must use Bombardier Service Bulletin A100–25–30, dated July 20, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 1, 2009.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–29377 Filed 12–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0682; Directorate Identifier 2008–NM–200–AD; Amendment 39–16131; AD 2009–25–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747–400, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 747 airplanes. The existing AD currently requires repetitive inspections for cracking, and repair as necessary, of lower lobe body frames (sections 42 and 46) of the fuselage. The existing AD also provides for optional modification of the frames, which terminates the repetitive inspections. This new AD requires additional repetitive inspections for cracking of certain fuselage frames, and corrective actions if necessary. This AD results from a new report of a crack found in a body frame with a tapered side guide bracket at fuselage station 1800, located on the left side between stringers 39 and 40; the frame was severed. We are issuing this AD to detect and correct the loss of structural integrity of the fuselage, which could result in rapid depressurization of the airplane.

DATES: This AD becomes effective January 14, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 14, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 86–18–01, amendment 39–5390 (51 FR 28691, August 11, 1986). The existing AD applies to certain Boeing Model 747 airplanes. That NPRM was published in the **Federal Register** on August 5, 2009 (74 FR 38995). That NPRM proposed to continue to require repetitive inspections for cracking, and repair as necessary, of lower lobe body frames (sections 42 and 46) of the fuselage. That NPRM also provides for optional modification of the frames, which terminates the repetitive inspections. That NPRM also proposed to require additional repetitive inspections for cracking of certain fuselage frames, and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been received on the NPRM. Boeing concurs with the content of the NPRM.

Explanation of Change to Final Rule

AD 86–18–01 does not provide a compliance time for doing the corrective actions required by paragraphs (g) and (h) of this AD. However, we have determined that it is implicit in the existing AD that the corrective actions be done before further flight. Sections 91.7 and 121.153 of the Federal Aviation Regulations (14 CFR 91.7 and 14 CFR 121.153) already require that aircraft be in an airworthy condition before they can be operated. We have changed paragraphs (g) and (h) of this AD to include those compliance times.

Conclusion

We reviewed the relevant data, including the comment that has been received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 237 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 86–18–01)	370	$80	$29,600, per inspection cycle.	112	$3,315,200, per inspection cycle.
Additional inspections (new action)	6	80	$480, per inspection cycle.	87	$41,760, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–5390 (51 FR 28691, August 11, 1986) and by adding the following new airworthiness directive (AD):

2009–25–11 Boeing: Amendment 39–16131. Docket No. FAA–2009–0682; Directorate Identifier 2008–NM–200–AD.

Effective Date

(a) This AD becomes effective January 14, 2010.

Affected ADs

(b) This AD supersedes AD 86–18–01, Amendment 39–5390.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747–400, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2749, dated September 25, 2008.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from a report of a crack found in a body frame with a tapered side guide bracket at fuselage station 1800, located on the left side between stringers 39 and 40; the frame was severed. The Federal Aviation Administration is issuing this AD to detect and correct the loss of structural integrity of the fuselage, which could result in rapid depressurization of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 86–18–01, With Revised Service Information

Repetitive Inspections

(g) For airplanes listed in Boeing Alert Service Bulletin 747–53A2237, Revision 1, dated March 28, 1986: Perform a detailed visual inspection for frame cracking from fuselage section 540 to 760, and 1820 to 1900, stringers 35 left to 42 left, in accordance with Section III of Boeing Alert Service Bulletin 747–53A2237, Revision 1, dated March 28, 1986. Do the inspection at the time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable. If any crack is found, before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or using a method approved in accordance with the procedures specified in paragraph (p) of this AD. Repeat the inspection at intervals not to exceed 3,000 landings until the terminating action specified in paragraph (g)(4) or (k) of this AD is performed.

(1) Within 300 landings for airplanes that have accumulated more than 12,000 landings on September 17, 1986 (the effective date of AD 86–18–01, amendment 39–5390).

(2) Within 800 landings for airplanes that have accumulated 10,000 to 12,000 landings on September 17, 1986.

(3) Within 800 landings or prior to the accumulation of 10,000 landings, whichever occurs later, for airplanes that have accumulated less than 10,000 landings on September 17, 1986.

(4) Modification of the frames before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–53A2237, Revision 1, dated March 28, 1986, constitutes terminating action for the repetitive inspections required by paragraph (g) of this AD.

(h) For airplanes listed in Boeing Alert Service Bulletin 747–53A2259, Revision 1, dated April 18, 1986: Perform a visual inspection of cargo side guide support brackets from fuselage station 1500 to 1800, right and left hand side, for a proper machined taper in accordance with Section III of Boeing Alert Service Bulletin 747–53A2259, Revision 1, dated April 18, 1986. Do the inspection at the time specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, as applicable. If any cargo side guide support bracket is improperly tapered, before further flight, perform a detailed visual inspection of the frame area adjacent to the untapered bracket for cracking in accordance with Boeing Alert Service Bulletin 747–53A2259, Revision 1, dated April 18, 1986. If any crack is found, before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or using a method approved in accordance with the procedures specified in paragraph (p) of this AD. Repeat the detailed visual inspection at intervals not to exceed 3,000 landings until the terminating action specified in paragraph (h)(4) of this AD is performed. Accomplishment of the inspections required by paragraph (k) of this AD terminates the inspections required by this paragraph.

(1) Within 300 landings for airplanes that have accumulated more than 12,000 landings on September 17, 1986 (the effective date of AD 86–18–01, amendment 39–5390).

(2) Within 800 landings for airplanes that have accumulated 10,000 to 12,000 landings on September 17, 1986.

(3) Within 800 landings or prior to the accumulation of 10,000 landings, whichever occurs later, for airplanes that have accumulated less than 10,000 landings on September 17, 1986.

(4) Installation of a tapered strap adjacent to the affected brackets before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–53A2259, Revision 1, dated April 18, 1986, constitutes terminating action for the repetitive inspections required by paragraph (h) of this AD.

(i) For Boeing Model 747SR airplanes only, based on continued mixed operation of cabin pressure differentials, the initial inspection thresholds and reinspection intervals specified in AD 86–18–01 may be multiplied by a 1.2 adjustment factor. This provision is not applicable to paragraphs (k), (m), and (n) of this AD.

(j) For the purposes of complying with AD 86–18–01, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 pounds per square inch. This provision is not applicable to paragraphs (k), (m), and (n) of this AD.

New Requirements of This AD

Repetitive Inspections

(k) For airplanes identified in Boeing Alert Service Bulletin 747–53A2749, dated September 25, 2008, that have accumulated 22,000 or fewer total flight cycles as of the effective date of this AD: Do initial and repetitive detailed inspections for frame cracking from fuselage body stations 1500 to 1800, stringers 39 to 40, by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2749, dated September 25, 2008, except as required by paragraph (l) of this AD. Do the inspections and corrective actions at the times specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2749, dated September 25, 2008, except as required by paragraphs (m) and (n) of this AD. Accomplishment of the inspections required by this paragraph terminates the inspections required by paragraph (h) of this AD.

Exceptions to Service Bulletin Procedures

(l) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–53A2749, dated

September 25, 2008, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(m) Where Boeing Alert Service Bulletin 747–53A2749, dated September 25, 2008, specifies a compliance time after the date of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(n) Where Boeing Alert Service Bulletin 747–53A2749, dated September 25, 2008, specifies a compliance time related to accomplishing an action ''as given in Boeing Service Bulletin 747–53A2259,'' this AD requires compliance within the specified compliance time after the applicable compliance time required by paragraph (h) of this AD.

Terminating Action

(o) Accomplishing the repetitive frame inspections required by AD 2006–05–02, amendment 39–14499; or AD 2005–20–30, amendment 39–14327; terminates the inspections required by paragraphs (g), (h), and (k) of this AD.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590; or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) AMOCs approved previously in accordance with paragraph (A) of AD 86–18–01, are approved as alternative methods of compliance with the corresponding requirements of paragraph (g) of this AD.

(4) AMOCs approved previously in accordance with paragraph (B) of AD 86–18–01, are approved as alternative methods of compliance with the corresponding requirements of paragraph (h) of this AD.

(5) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

Material Incorporated by Reference

(q) You must use the service information contained in Table 1 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Boeing Alert Service Bulletin 747–53A2237	1	March 28, 1986.
Boeing Alert Service Bulletin 747–53A2259	1	April 18, 1986.
Boeing Alert Service Bulletin 747–53A2749	Original	September 25, 2008.

Boeing Alert Service Bulletin 747–53A2259, Revision 1, dated April 18, 1986, contains the following effective pages:

Page Nos.	Revision level shown on page	Date shown on page
2, 3, 5, 6, 9–11, 15, 16, 18–24	Original	March 28, 1986.
1, 4, 7, 8, 12–14, 17, 25, 26	Revision 1	April 18, 1986.

(1) The Director of the Federal Register approved the incorporation by reference of the service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 1, 2009.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–29222 Filed 12–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1112; Directorate Identifier 2009–NM–237–AD; Amendment 39–16132; AD 2009–25–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 Series Airplanes; Model A340–200 and –300 Series Airplanes; and Model A340–500 and –600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results

from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> In-Service experience has shown cases where several oxygen containers could not fully open.
>
> Investigations have revealed that these events are due to an insufficient clearance between the oxygen container and the adjacent panels (Passenger Service Unit (PSU), spacers or filler panels).
>
> Incorrect opening of the oxygen containers could lead to non deployment of oxygen masks.
>
> This condition, if not detected and corrected, could prevent passengers from being supplied with oxygen in case of in flight cabin depressurization * * *.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective December 28, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 28, 2009.

We must receive comments on this AD by January 25, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0237–E, dated October 30, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> In-Service experience has shown cases where several oxygen containers could not fully open.
>
> Investigations have revealed that these events are due to an insufficient clearance between the oxygen container and the adjacent panels (Passenger Service Unit (PSU), spacers or filler panels).
>
> Incorrect opening of the oxygen containers could lead to non deployment of oxygen masks.
>
> This condition, if not detected and corrected, could prevent passengers from being supplied with oxygen in case of in flight cabin depressurization, which would constitute an unsafe condition.
>
> To prevent such condition, this AD requires a one-time [general visual] inspection of the oxygen containers and adjacent panels installation and corrective actions, as necessary, to ensure an adequate clearance between these components.

Corrective actions include adjusting oxygen containers and tightening locking devices. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued All Operators Telexes A330–35A3026, A340–35A4027, and A340–35A5019, all dated October 26, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the compliance time defined in the MCAI is 150 flight hours for accomplishing the initial inspection for insufficient clearance between the oxygen container and the adjacent panels. Incorrect opening of the oxygen containers could lead to non-deployment of the oxygen masks, which could prevent passengers from being supplied with oxygen in case of in-flight cabin depressurization. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1112; Directorate Identifier 2009–NM–237–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2009–25–12 Airbus: Amendment 39–16132. Docket No. FAA–2009–1112; Directorate Identifier 2009–NM–237–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, all serial numbers, certificated in any category, if delivered before October 26, 2009.

(1) Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 series airplanes, on which Airbus modification 48809 has been embodied in production.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 series airplanes, on which Airbus modification 48809 has been embodied in production.

(3) Airbus Model A340–541 and –642 airplanes.

Subject

(d) Air Transport Association (ATA) of America Code 35: Oxygen.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

In-Service experience has shown cases where several oxygen containers could not fully open.

Investigations have revealed that these events are due to an insufficient clearance between the oxygen container and the adjacent panels (Passenger Service Unit (PSU), spacers or filler panels).

Incorrect opening of the oxygen containers could lead to nondeployment of oxygen masks.

This condition, if not detected and corrected, could prevent passengers from being supplied with oxygen in case of in-flight cabin depressurization, which would constitute an unsafe condition.

To prevent such condition, this AD requires a one-time [general visual] inspection of the oxygen containers and adjacent panels installation and corrective actions, as necessary, to ensure an adequate clearance between these components.

Corrective actions include adjusting oxygen containers and tightening locking devices.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Unless already done, do the following actions:

(1) Within 150 flight hours after the effective date of this AD: Do a general visual inspection of the clearance between the oxygen container door lid and the adjacent panel/component of each cabin oxygen container located in the passenger service channel, in accordance with paragraph 4.2 of the applicable all operators telex (AOT) identified in Table 1 of this AD.

TABLE 1—SERVICE INFORMATION

For model—	Airbus AOT—	Dated—
A330–200 and –300 series airplanes	A330–35A3026	October 26, 2009.
A340–200 and –300 series airplanes	A340–35A4027	October 26, 2009.
A340–500 and –600 series airplanes	A340–35A5019	October 26, 2009.

(2) If any clearance is determined to be less than 2.0 millimeters during any inspection required by paragraph (g)(1) of this AD: Before further flight, do all corrective actions in accordance with paragraph 4.2 of the applicable AOT identified in Table 1 of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0237–E, dated October 30, 2009; and the service information specified in Table 2 of this AD; for related information.

TABLE 2—RELATED SERVICE INFORMATION

Airbus AOT—	Dated—
A330–35A3026	October 26, 2009.
A340–35A4027	October 26, 2009.
A340–35A5019	October 26, 2009.

Material Incorporated by Reference

(j) You must use the applicable service information contained in Table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise. (Only the first page of these documents contains the document number, revision level, and date; no other page of these documents contains this information.)

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Airbus AOT—	Dated—
A330–35A3026	October 26, 2009.
A340–35A4027	October 26, 2009.
A340–35A5019	October 26, 2009.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail: *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on November 30, 2009.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–29378 Filed 12–9–09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 210, 211, and 212

[Docket No. FDA–2004–N–0449] (formerly Docket No. 2004N–0439)

Current Good Manufacturing Practice for Positron Emission Tomography Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations on current good manufacturing practice (CGMP) for positron emission tomography (PET) drugs. The regulations are intended to ensure that PET drugs meet the requirements of the Federal Food, Drug, and Cosmetic Act (the act) regarding safety, identity, strength, quality, and purity. In this final rule, we are establishing CGMP regulations for approved PET drugs. For investigational and research PET drugs, the final rule states that the requirement to follow CGMP may be met by complying with these regulations or by producing PET drugs in accordance with the United States Pharmacopeia (USP) general chapter on compounding PET radiopharmaceuticals. We are establishing these CGMP requirements for PET drugs under the provisions of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). Elsewhere in this issue of the **Federal Register**, we are announcing the availability of a guidance entitled ''PET Drugs—Current Good Manufacturing Practice (CGMP).''

DATES: This regulation is effective December 12, 2011. The incorporation by reference of a certain publication listed in the rule is approved by the Director of the Federal Register as of December 12, 2011.

FOR FURTHER INFORMATION CONTACT: Brenda Uratani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 1–240–328–7621, e-mail: *Brenda.Uratani@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

We are adding to our regulations new part 212 (21 CFR part 212) to establish CGMP requirements for PET drugs in accordance with section 121 of the Modernization Act (Public Law 105–115).

A. Background

In the **Federal Register** of September 20, 2005 (70 FR 55038) (2005 proposed

rule), we published a proposed rule to establish CGMP requirements for PET drugs. PET is a medical imaging modality involving the use of a unique type of radiopharmaceutical drug product. The majority of PET drugs are injected intravenously into patients for diagnostic purposes. Section 121(c)(1)(A) of the Modernization Act directed us to establish appropriate approval procedures and CGMP requirements for PET drugs. During our development of these PET drug CGMP requirements and approval procedures, we were to take due account of any relevant differences between not-for-profit institutions that compound PET drugs for their patients and commercial manufacturers of PET drugs and to consult with patient advocacy groups, professional associations, manufacturers, and physicians and scientists who make or use PET drugs (section 121(c)(1)(B) of the Modernization Act). In the preamble to the 2005 proposal, we described the steps we took and the groups we consulted while developing the proposed regulations on PET drug CGMP. We refer readers to the preamble of the 2005 proposal for details on these events, information on the unique nature of PET drugs, and our conclusions regarding the current status of PET drug production in the United States.

B. The Proposed Rule

In the proposed rule, we stated that the proposed CGMP requirements would contain the minimum standards needed for PET drug production at all types of PET production facilities. We further stated that the proposed CGMP regulations were designed to be sufficiently flexible to accommodate not-for-profit, academically oriented institutions as well as larger commercial producers.

In consideration of the unique nature of PET drugs and PET drug production, the proposed CGMP requirements for PET drugs differed in many significant ways from the CGMP requirements for non-PET drugs found in our regulations in parts 210 and 211 (21 CFR parts 210 and 211). The proposed PET CGMP requirements included differences concerning personnel; aseptic processing; quality control of components; self-verification of production steps; same-person oversight of production, batch record review, and authorization of product release; and labeling requirements.

C. Changes to the Proposed Rule

We received 11 comments on the proposed rule, which we address in section III of this document. As a result of the comments, and upon further review on our own initiative, we have made several changes to the proposed PET CGMP requirements, including the following:

- We have substituted the term ''quality assurance'' for ''quality control'' and revised the definition.
- We have clarified that the CGMP requirements followed for the study of PET drugs under an investigational new drug application (IND) or under the review of a Radioactive Drug Research Committee (RDRC) (which reviews and approves the use of radioactive drugs for certain limited research purposes in accordance with 21 CFR 361.1) may be either the regulations in part 212 or the standards in Chapter 823, ''Radiopharmaceuticals for Positron Emission Tomography—Compounding'' of the 32d ed. of the USP (2009) (USP 32).
- We have simplified the requirement for identification of a sample received for laboratory testing.
- We have provided more flexibility in method for determining that each batch of a PET drug product conforms to specifications before final release.
- We revised the circumstances under which conditional final release may be acceptable.

When we published the proposed rule on PET CGMP, we also made available a revised draft guidance on CGMP for PET drugs (70 FR 55145, September 20, 2005). Elsewhere in this issue of the **Federal Register**, we are announcing the availability of a guidance entitled ''PET Drugs—Current Good Manufacturing Practice (CGMP)'' to further assist PET production facilities in complying with the requirements in the final rule.

II. Unique Aspects of the PET CGMP Regulations

The final rule establishes several differences between CGMP requirements for PET drugs and CGMP requirements for other drugs in parts 210 and 211. Included among these differences are the following:

- Fewer required personnel with fewer organizational restrictions consistent with the scope and complexity of operations;
- Allowance for multiple operations (or storage) in the same area as long as organization and other controls are adequate;
- Streamlined requirements for aseptic processing consistent with the nature of the production process;
- Streamlined quality assurance requirements for components;
- Self-verification of significant steps in PET drug production consistent with the scope and complexity of operations;
- Same-person oversight of production, review of batch records, and authorization of product release consistent with the scope and complexity of operations;
- Greater flexibility in approaches to determining whether PET drug products conform to their specifications;
- Specialized quality assurance requirements for PET drugs produced in multiple sub-batches; and
- Simplified labeling requirements consistent with the scope and complexity of operations.

III. Comments on the Proposed Rule

We received 11 comments on the proposed rule, including 6 from PET drug producers, 3 from industry associations, 1 from a consultant, and 1 from the USP. A summary of the comments received and our responses follow.

A. General Comments

(Comment 1) Several comments recommended that the title of the proposed rule be changed to ''Current Good Manufacturing Practice for Positron Emission Tomography Drug Products.'' The comments stated that the draft guidance title refers to ''PET Drug Products,'' and the comments maintained that the focus of the rule is on drug products.

(Response) We do not agree with the comments. Section 121(c)(1)(A)(ii) of the Modernization Act requires us to develop appropriate CGMP requirements for PET ''drugs,'' rather than PET ''drug products.'' The definition of ''compounded positron emission tomography drug'' in section 121(a) of the Modernization Act (codified at section 201(ii) of the act (21 U.S.C. 321(ii))), encompasses both a PET drug product (i.e., a PET drug in finished dosage form) and the active pharmaceutical ingredient (API) that is incorporated into a PET drug product and enables the product to perform its diagnostic function (e.g., the 2-deoxy-2-[18F]fluoro-D-glucose in an FDG F 18 injection drug product). Thus, the PET CGMP requirements are applicable to the production of a PET API as well as the PET drug product containing that API.

To clarify that the PET CGMP regulations apply to PET drugs, not solely to PET drug products, we have made several revisions to the proposed rule. To the definition of ''PET drug'' in § 212.1, we have added the following statement: '''PET drug' includes a 'PET drug product' as defined in this

section.'' We also have revised the definition of ''PET drug product'' in § 212.1 to state as follows: ''*PET drug product* means a finished dosage form of a PET drug, whether or not in association with one or more other ingredients.'' We have revised §§ 212.2 and 212.5 to make clear that the PET CGMP requirements apply to PET drugs (not only to PET drug products), and, where appropriate, we have revised other sections of part 212 accordingly. For those provisions in part 212 that are intended to apply only to finished dosage forms of PET drugs, the term ''PET drug product'' is used.

(Comment 2) As noted in the response to the previous comment, section 121(a) of the Modernization Act added a definition of ''compounded positron emission tomography drug'' to the act as section 201(ii). One comment stated that although section 121(a) of the Modernization Act recognizes that PET drugs can be compounded and that compounding can occur by or on the order of a practitioner who is licensed by a State to compound or order compounding for a PET drug, the proposed rule focuses primarily on manufacturing and does not appear to recognize the role of professional practitioners in the practice of medicine and pharmacy. The comment stated that the agency seems to have determined that production of a PET drug is exclusively an issue of regulatory adherence, apparently unintentionally removing the standard of professional responsibility traditionally established for the practice of medicine and pharmacy, and treating all producers of PET drugs as manufacturers. The comment referred to the draft guidance, which states that: (1) Production of a PET drug includes all operations to the point of final release of a finished dosage form, and (2) after a PET drug product is received by the receiving facility, subsequent dispensing of a patient-specific dose and use of the PET drug is regarded as part of the practice of medicine and pharmacy. The comment maintained that the rule and the guidance should state that they only apply to noncompounded PET drugs and that the compounding of PET drugs will continue to be subject to the requirements of the various State boards of medicine and pharmacy as well as the PET compounding standards and monographs of the USP.

(Response) We do not agree with the comment that the proposed rule did not recognize the practice of medicine and pharmacy with respect to PET drugs. The proposed rule did not include regulations on the administration or dispensing of PET drug products. The proposed rule defined ''production'' of a PET drug as the manufacturing, compounding, processing, packaging, labeling, reprocessing, repacking, relabeling, and testing of a PET drug. As the comment noted, the draft guidance stated that production includes all operations to the point of final release of a finished dosage form, and use of a PET drug product after receipt by a receiving facility generally is regarded as the practice of medicine and pharmacy.

The Modernization Act does not require separate regulations for compounded PET drugs and noncompounded PET drugs. Section 121(b) of the Modernization Act states that, until after the later of 4 years after the date of enactment of the Modernization Act or 2 years after the agency establishes approval procedures and CGMP requirements for PET drugs, a compounded PET drug is not adulterated if it is compounded, processed, packed, or held in conformity with the PET compounding standards and official monographs of the USP. Thus, after the later of the two specified times, the CGMP requirements that FDA will have established for PET drugs will apply to compounded PET drugs. The fact that some production or ''compounding'' of PET drugs is performed by physicians, including some academicians and researchers at facilities located in universities and other not-for-profit institutions, does not remove such production from the scope of the PET CGMP regulations. Consistent with the Modernization Act, the final rule ensures that the production of compounded PET drugs is subject to the CGMP regulations while permitting the dispensing and administration of PET drug products in accordance with State regulation of the practice of medicine and pharmacy.

(Comment 3) One comment questioned whether new drug applications (NDAs) and abbreviated new drug applications (ANDAs) are needed or realistic for very short lived PET drugs that logistically require in-house preparation, such as those labeled with O–15. The comment maintained that the preparation of these drugs falls more closely under the definition of compounding than manufacturing because their extremely short half-lives preclude marketing and distribution. The comment stated that these short half-life PET drugs are individually compounded onsite, one dose at a time, for specific individual patients, which means that the drugs have no commercial potential and thus are not marketed.

(Response) As stated in our response to comment 2, under the Modernization Act, there is no difference between compounding PET drugs and producing PET drugs. Having a very short half-life might mean that a PET drug could not be distributed to a facility outside of the one in which it was produced, but the product could still be produced, released for use, and administered to patients within the same facility. It is just as important that these PET drugs be produced under approved applications—and be subject to CGMP—as it is for PET drugs that are produced and distributed to other facilities for subsequent administration to patients.

(Comment 4) One comment stated that although section 121(c)(1)(B) of the Modernization Act directs FDA to take due account of the relevant differences between not-for-profit institutions that compound PET drugs and commercial manufacturers of PET drugs, the agency concluded that profit or not-for-profit status does not have a significant bearing on the quality of PET drugs that are produced and distributed. The comment stated that we seem to have concluded that the only way to regulate the production of PET drugs is to require an NDA or ANDA. The comment stated that our decisions on how to enforce the Modernization Act appear to have been greatly influenced by the commercialization of PET drugs and the fact that many PET drugs and studies are reimbursed by the government and private insurance payors. The comment stated that although we had simplified the approval process for 3 PET drugs (fludeoxyglucose (FDG) F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection) for specified indications in the notice published in the March 10, 2000, issue of the **Federal Register** (65 FR 12999) (March 2000 Notice), there are other PET drugs in use and the USP contains monographs for 12 PET drugs. The comment maintained that it will be an almost insurmountable hurdle for many facilities to submit NDAs or ANDAs for the PET drugs for which FDA has not developed a template, guidance, and instructions for preparing marketing applications. The comment added that approved PET drug products might have patent and market exclusivity protection, and it would be unlikely that commercial PET facilities would invite competition.

(Response) The Modernization Act does not leave the manner in which PET drugs are to be regulated completely to FDA's discretion. Rather, in section 121(c)(1)(A)(i), Congress directed the agency to develop ''appropriate procedures for the approval of positron emission tomography drugs *pursuant to*

section 505 of the [act] (21 U.S.C. 355)'' (emphasis added). Section 505 of the act (21 U.S.C. 355) contains the provisions on new drugs, including provisions on NDAs and ANDAs. To the extent that increased commercialization of PET drugs has affected the size, scope, and complexity of PET drug production operations, the PET CGMP regulations indirectly reflect this market reality. However, as we stated in the proposed rule, not-for-profit versus for-profit status does not (and should not) have a significant bearing on the quality of PET drugs produced or the facilities and procedures needed to ensure product quality. Thus, our approach to the regulation of PET drugs has been shaped largely by these statutory and product quality imperatives, rather than commercialization or reimbursement concerns.

Regarding approval procedures for PET drugs, in the proposed rule to establish regulations on the evaluation and approval of diagnostic radiopharmaceuticals (63 FR 28301, May 22, 1998), we stated that although we expected the standards for determining the safety and effectiveness of diagnostic radiopharmaceuticals set forth in the proposed rule to apply to PET drugs, we would address that issue when we published our proposal on PET drugs. On May 17, 1999 (64 FR 26657), we published the final rule establishing regulations on the review and approval of diagnostic radiopharmaceutical drugs in part 315 (21 CFR part 315) and diagnostic radiopharmaceutical biologics in part 601 (21 CFR part 601) (§§ 601.30 through 601.35). These regulations complement and clarify the regulations on the approval of drugs and biologics in part 314 (21 CFR part 314) and part 601, respectively.

Part 315 provides considerable detail on what is needed to obtain approval of an application for a diagnostic radiopharmaceutical. Part 315 includes provisions on the following:

- General factors relating to the safety and effectiveness of diagnostic radiopharmaceuticals;
- The types of indications for which approval might be sought and the evidence needed to support those indications; and
- The factors that we consider in making a safety assessment of a diagnostic radiopharmaceutical and the types of information needed to demonstrate that a product is safe.

In addition, we have issued three guidance documents to assist developers of medical imaging drug and biological products in planning and coordinating their clinical investigations and preparing and submitting INDs and marketing applications (69 FR 34683, June 22, 2004). These guidances on ''Developing Medical Imaging Drug and Biological Products'' are as follows: ''Part 1: Conducting Safety Assessments;'' ''Part 2: Clinical Indications;'' and ''Part 3: Design, Analysis, and Interpretation of Clinical Studies.''

In the March 2000 Notice, we declared FDG F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection to be safe and effective for certain indications when produced under conditions specified in approved applications. We took this action after reviewing the published literature on these drugs and indications and after presenting our preliminary findings at public meetings and before the Medical Imaging Drugs Advisory Committee. We issued the March 2000 Notice to help make it easier for all PET drug producers to obtain marketing approval for these commonly used PET drugs. The March 2000 Notice, along with a draft guidance document entitled ''PET Drug Applications—Content and Format for NDAs and ANDAs'' (65 FR 13010, March 10, 2000), which we intend to finalize in the near future, provides considerable assistance to PET drug producers in submitting applications for these commonly used PET drug products.

In the March 2000 Notice, we noted that, in a future issue of the **Federal Register**, we intended to state our approach to applications for approval of other PET drugs and new indications for approved drugs in accordance with the Modernization Act. After considering this issue, we conclude that it is appropriate to apply part 315 to the review and approval of new PET drugs and new indications for approved PET drugs under part 314. We believe that the use of PET drugs raises safety and effectiveness concerns that are comparable to those posed by other diagnostic radiopharmaceuticals. Although PET drugs differ in some ways from other diagnostic radiopharmaceuticals, such as in their often very short half-lives and limited distribution environment, we find that these differences are not so pronounced that they necessitate the establishment of separate approval regulations. Therefore, we conclude that parts 314 and 315 of the regulations constitute the appropriate approval procedures for PET drugs in accordance with section 121(c)(1)(A)(i) of the Modernization Act.

We realize that submitting marketing applications for PET drugs under parts 314 and 315 will require considerably more resources than are needed to submit applications for the PET drug products and indications listed in the March 2000 Notice. However, the agency lacks the resources to conduct literature reviews to determine the safety and effectiveness of all PET drugs and indications that might be used in the future. We believe that the guidances on ''Developing Medical Imaging Drug and Biological Products'' will greatly assist PET drug producers in investigating and seeking approval of new PET drugs and new indications for existing drugs in accordance with parts 314 and 315. We believe that these guidances will lessen the burden of PET drug producers in obtaining approval of new products.

As the comment noted, we acknowledge in the March 2000 Notice that PET drugs that we have approved might be protected from competition by patents, or by marketing exclusivity granted by us at the time of approval. We agree with the comment that these factors could have an effect on the availability of certain PET drugs. However, because patent and exclusivity rights are protected by statute, revising those rights would require Congressional action.

(Comment 5) One comment stated that the proposed rule failed to acknowledge that the size, scope, and complexity of production operations that lead to CGMP differences are also an important reflection of differences between not-for-profit and commercial institutions. The comment claimed that the rule might compel not-for-profit hospitals and research institutions to divert resources from research, health care delivery, and patient services to meet CGMP compliance obligations that are not grounded in clinical or safety considerations. In particular, the comment stated that subjecting hospitals and research institutions to the same inspection regime as large commercial producers would be unduly onerous. The comment stated that most facilities in hospitals and research institutions produce only limited doses of PET drugs for their own clinical use, they do not profit from such production, and they may lack the resources to satisfy FDA inspection requirements. The comment welcomed the opportunity to assist the agency in developing inspection guidelines that would ensure that the CGMP requirements and enforcement strategies take due account of any relevant differences between not-for-profit and for-profit institutions. In particular, the comment stated that, as a matter of enforcement discretion and practical implementation, we should only inspect not-for-profit facilities that produce PET

drugs for their own clinical use when we have cause to suspect that drug safety or quality has been compromised.

(Response) As we stated in the proposed rule, although there are some differences between not-for-profit and commercial institutions, there is some overlap between the two, including when for-profit entities manage the production of PET drugs within not-for-profit institutions. We concluded that the principal factors influencing production and CGMP differences among PET drug producers are the size, scope, and complexity of PET drug operations. We designed the CGMP regulations with these factors in mind, rather than trying to establish different CGMP requirements for several different kinds of producers. We believe that the CGMP regulations contain the minimum requirements needed to ensure the safety, identity, strength, quality, and purity of all PET drugs, regardless of where they are produced. Although we recognize that PET drug producers will incur costs in coming into compliance with the PET CGMPs (see the analysis of economic impacts in section IV of this document), we believe that CGMP expenditures by not-for-profit institutions and commercial producers will benefit patients who receive PET drugs.

We appreciate the comment's concern about the impact of inspections on PET drug producers. In the preamble to the proposed rule, we stated that, for PET drugs studied under an IND and PET drugs produced for research under the review of an RDRC, we generally would conduct inspections only on a for-cause basis. For preapproval inspections and inspections of marketed drugs, we will consider such factors as the size, scope, and complexity of operations in establishing our inspectional approach. We would expect that because many hospitals and research institutions have smaller operations, the impact on operations that those institutions might experience due to an inspection would be less than the impact experienced by a commercial producer with significantly larger operations. In any case, we will provide training to agency inspectors so that they conduct inspections in a manner that is consistent with the regulations yet takes into account relevant differences among PET drug producers.

(Comment 6) One comment expressed support for the incorporation into the proposed rule of principles and definitions in the USP general chapter on compounding PET radiopharmaceuticals.

(Response) As we stated in the proposed rule, the fact that Chapter 823 reflects the views of the PET community and the agency on how to properly produce PET drugs makes it appropriate to incorporate principles and concepts from Chapter 823 into the CGMP requirements. In addition, as discussed in response to comment 25, under § 212.5(b) of the final rule, for investigational and research PET drugs, the requirement under the act to follow CGMP is met by complying with part 212 or by producing the drugs in accordance with Chapter 823 of the USP's 32d ed. (the current (2009) edition of the USP).

(Comment 7) One comment stated that, although many regulations require drug manufacturers to include pediatric data with their NDA submissions, PET drugs by definition are for metabolic and/or diagnostic studies and do not elicit pharmacologic effect. The comment stated that if the metabolic pathway being studied is functional in pediatric patients, it stands to reason that the PET drug will appropriately provide the diagnostic data needed. The comment maintained that if the pediatric regulations are allowed to impact the PET CGMP regulations, many children will be unnecessarily exposed to radiation and NDA submissions will be inappropriately delayed, without scientific benefit, for the sole purpose of meeting the pediatric regulations. Therefore, the comment recommended that part 212 be exempted from all regulations that require pediatric data collection or submission for primary or continued approval.

(Response) The question of the application of the statutory and regulatory provisions on pediatric study requirements to PET drugs is beyond the scope of this rulemaking.

B. Scope of Part 211 (Proposed § 211.1)

The proposed rule included revisions to parts 210 and 211 to exclude PET drugs from the scope of CGMP for the manufacturing, processing, packing, or holding of drugs and CGMP for finished pharmaceuticals.

(Comment 8) One comment expressed support for the exclusion of PET drugs from the scope of the requirements in parts 210 and 211.

(Response) Exclusion of PET drugs from the scope of parts 210 and 211 is necessary and appropriate in light of the establishment of CGMP requirements for PET drug products in accordance with the Modernization Act.

(Comment 9) One comment stated that FDA inspectors will need retraining to make the exclusion of PET drugs from parts 210 and 211 clear in practice.

(Response) We will provide FDA field offices with adequate training regarding the new CGMP regulations for PET drugs in part 212 so that agency officials can conduct appropriate inspections to determine compliance with these regulations.

C. Definitions (Proposed § 212.1)

1. Active Pharmaceutical Ingredient

In the proposed rule, ''active pharmaceutical ingredient'' was defined as a substance that is intended for incorporation into a finished PET drug product and is intended to furnish pharmacological activity or other direct effect in the diagnosis or monitoring of a disease or a manifestation of a disease in humans, but does not include intermediates used in the synthesis of such substance.

(Comment 10) Several comments stated that PET drugs by their nature as diagnostic drugs should not elicit a pharmacological effect, so they recommended deleting ''pharmacological activity'' from the definition. One comment specifically recommended substituting ''to furnish the physiological pathway'' for ''to furnish pharmacological activity or other direct effect.''

(Response) We do not agree with the comments. Although PET drugs as defined in these regulations are intended for diagnostic use and are not intended to provide a pharmacological effect, many PET drugs provide their diagnostic effect by binding to receptors, which is a type of pharmacological activity. In addition, the term ''physiological pathway'' would not be appropriate because some PET drugs may not actually furnish details of the physiological pathway. Therefore, we have not changed the definition of active pharmaceutical ingredient.

(Comment 11) Two comments stated that we should add ''treatment'' of a disease to the definition of active pharmaceutical ingredient because a PET drug may be used for tumor therapy.

(Response) We do not agree with the comment. Under section 121(a) of the Modernization Act, a ''compounded positron emission tomography drug'' is a drug that ''exhibits spontaneous disintegration of unstable nuclei by the emission of positrons and *is used for the purpose of providing dual photon emission tomographic diagnostic images*'' (codified as section 201(ii)(1)(A) of the act) (emphasis added). This wording in the definition means that the provisions of the Modernization Act concerning PET drugs, including the requirement that

we establish appropriate CGMP requirements for PET drugs, do not apply to PET drugs used for therapeutic purposes. Therefore, it would not be appropriate to define active pharmaceutical ingredient as including use of the substance in the treatment of a disease.

(Comment 12) One comment expressed support for the exclusion of intermediates or chemical precursors used in the synthesis and production of PET drugs from the definition of active pharmaceutical ingredient. The comment stated that proposed § 212.40(c)(1)(i) clarified that finished product testing and reliance on supplier certificates of analysis was appropriate to ensure that the correct components had been used.

(Response) Although intermediates are excluded from the definition of active pharmaceutical ingredient, we wish to make clear that intermediates, as components of PET drugs, are subject to the PET CGMP regulations (see, e.g., § 212.40 on control of components, containers, and closures).

2. Master Production and Control Record

We proposed to define ''master production and control record'' as a compilation of records containing the procedures and specifications for the production of a PET drug.

(Comment 13) Three comments recommended changes to the proposed definition. One comment stated that it inadequately describes the relationship of the master formula and batch sheet as used in PET drug production; according to the comment, the batch record is the documented activity recorded as the result of following the master formula. One comment stated that the master production and control record should be a detailed step-by-step instruction set, while the input and output information from the production batch is recorded in the batch record. Both of these comments recommended substituting the term ''control procedure'' for ''control record.'' One comment stated that to more accurately reflect that batch records need not be exact copies of the master production and control document, the term ''control document'' should be substituted for ''control record'' and the definition should be changed to ''a compilation of instructions containing the procedures for the production of a PET drug product and specifications for the product.''

(Response) We do not agree that it is appropriate to change the term ''control record'' because this is a standard term used in the production of drugs. However, we agree that it is appropriate to change the definition of master production and control record to a compilation of instructions (rather than records) containing the procedures and specifications for the production of a PET drug, and we have revised the definition accordingly.

3. PET Drug

We proposed to define ''PET drug'' as a radioactive drug that exhibits spontaneous disintegration of unstable nuclei by the emission of positrons and is used for providing dual photon positron emission tomographic diagnostic images. The definition specifically includes any nonradioactive reagent, reagent kit, ingredient, nuclide generator, accelerator, target material, electronic synthesizer, or other apparatus or computer program to be used in the preparation of a PET drug. As stated in the proposed rule, this definition closely parallels the definition of PET drug in section 121(a) of the Modernization Act (codified as section 201(ii) of the act).

As stated in our response to comment 1, we have added the statement '''PET drug' includes a 'PET drug product' as defined in this section'' to the definition of ''PET drug'' in § 212.1.

(Comment 14) Two comments stated that because a PET drug may also be used for tumor therapy, the definition should state that a PET drug is used for providing diagnostic images or therapeutic procedures.

(Response) As stated in our response to comment 11, the provisions of the Modernization Act concerning PET drugs do not apply to PET drugs used for therapeutic purposes. Therefore, it would not be appropriate to define PET drug as including use of the drug for therapeutic purposes.

(Comment 15) Several comments addressed the second sentence of the definition of PET drug, which lists certain items that are included in the definition. Two comments stated that the second sentence of the definition is inaccurate within the practical and technical meaning of a drug and, specifically, a PET drug. One comment stated that the definition seems overly broad in that it includes both components and equipment used to produce the PET drug. Two comments stated that a PET drug product does not include the components of a PET drug listed in the second sentence of the definition, necessitating a change to the definition of ''PET drug'' or ''PET drug product.'' One comment stated that generators, accelerators, electronic synthesizers, and computer programs should be deleted from the definition because they are not PET drugs but ancillary items.

(Response) Section 201(ii)(2) of the act states that a compounded PET drug ''includes any nonradioactive reagent, reagent kit, ingredient, nuclide generator, accelerator, target material, electronic synthesizer, or other apparatus or computer program to be used in the preparation of such a drug.'' Therefore, it is appropriate that the definition of ''PET drug'' in the CGMP regulations for PET drugs include these items. However, because a ''PET drug product'' is defined as ''a finished dosage form of a PET drug,'' it is not necessary that the definition restate the list of items set forth in the definition of ''PET drug.''

(Comment 16) Two comments stated that a generator system that produces a PET radionuclide from the decay of a longer half-lived parent isotope should be regulated under the CGMP requirements in part 211.

(Response) The generator system described in the comments is a nuclide generator under the definition of PET drug in section 201(ii)(2) of the act. Therefore, such generator systems are included in the definition of PET drug in § 212.1 and are subject to the CGMP requirements in part 212. FDA has approved an NDA for a PET drug containing a generator (rubidium chloride RB-82 generator).

(Comment 17) One comment stated that although liquid target material for PET production facilities seems to fall under the proposed definition of PET drug, the comment did not believe that we intended to regulate producers of this material under part 212.

(Response) Target material is included in the definition of PET drug in section 201(ii)(2) of the act. Therefore, it is appropriate to include target material in the definition of PET drug in § 212.1. Target material is thus subject to the PET CGMP requirements in part 212, including the provisions on components of PET drugs in § 212.40. However, with respect to the manufacture of target material that is intended to be used as a component of a PET drug, we intend to exercise our enforcement discretion by not requiring compliance with part 212.

(Comment 18) One comment stated that an alternative to the proposed definition would be to develop consistency with part 315 for diagnostic radiopharmaceuticals because PET drugs are radiopharmaceuticals. The comment stated that this would help maintain clarity of language when discussing all radiopharmaceuticals and eliminate sources of confusion in the proposed definition of PET drug.

(Response) Section 315.2 of the regulations defines ''diagnostic radiopharmaceutical'' as an article that is intended for use in the diagnosis or monitoring of a disease or a manifestation of a disease in humans and that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons, or any nonradioactive reagent kit or nuclide generator that is intended to be used in the preparation of such an article. Because we are implementing these CGMP regulations for PET drugs in accordance with section 121 of the Modernization Act, it is appropriate that the definition of PET drug in § 212.1 reflect the definition in the Modernization Act (section 201(ii) of the act). We believe that the definition of PET drug in § 212.1 is sufficiently consistent with the definition of diagnostic radiopharmaceutical in § 315.2 that it is unlikely to cause confusion.

(Comment 19) One comment stated that ''PET drug'' and ''PET drug product'' are used somewhat interchangeably in the proposed rule. For example, the comment noted that although proposed § 212.5(a) states that the regulations apply to PET drug products, the title of § 212.40 refers to ''PET drugs.''

(Response) As stated in our response to comment 1, we have revised the proposed rule to clarify that the PET CGMP regulations apply to PET drugs, which include PET drug products (i.e., finished dosage forms of PET drugs). Where a provision is intended to apply only to finished dosage forms of PET drugs (e.g., § 212.61 on stability, § 212.80 on labeling and packaging), the term ''PET drug product'' is used. Therefore, the title of § 212.40 continues to refer to ''PET drugs.'' However, provisions in § 212.40 refer to ''drug product'' containers and closures and to finished-product testing of a ''PET drug product'' because these provisions are applicable only to finished dosage forms of PET drugs.

4. PET Drug Product

We proposed to define ''PET drug product'' as a finished dosage form that contains a PET drug, whether or not in association with one or more other ingredients.

As stated in our response to comment 1, we have redefined ''PET drug product'' as a finished dosage form of a PET drug, whether or not in association with one or more other ingredients.

(Comment 20) One comment stated that the definition of PET drug product should be revised to ''a finished dosage form suitable for administration to humans.'' The comment further stated that for a PET drug product to be administered intravenously, it should comply with the sterility requirements for parenterals.

(Response) We do not believe that it is necessary to refer specifically to humans in the definition of PET drug product because § 212.2 states that CGMP for PET drugs is the minimum requirements for the methods to be used in, and the facilities and controls used for, the production, quality assurance, holding, or distribution of PET drugs intended for human use. With respect to CGMP sterility requirements, all injectable PET drugs must meet the requirements for sterility testing in § 212.70(e).

5. PET Production Facility

We proposed to define ''PET production facility'' as a facility that is engaged in the production of a PET drug.

(Comment 21) Two comments stated that the definition of PET production facility does not accurately depict the actual function of the facility. The comments stated that the definition could be interpreted to include a facility for the production of PET scanners or for the acquisition of PET images. The comments stated that the term ''PET drug production facility'' would more precisely reflect the proposed definition.

(Response) We agree with the comments and have substituted ''PET drug production facility'' for ''PET production facility.''

6. Quality Control

We proposed to define ''quality control'' as a system for maintaining the quality of active ingredients, PET drug products, intermediates, components that yield an active pharmaceutical ingredient, analytical supplies, and other components, including container-closure systems and in-process materials, through procedures, tests, analytical methods, and acceptance criteria.

(Comment 22) Several comments recommended substituting ''ensuring'' for ''maintaining'' in the definition of quality control. One comment stated that quality control activities are more commonly defined as intended to ensure quality rather than maintain quality.

(Response) We agree with the comment and have revised the definition accordingly. In addition, on our own initiative we have replaced the term ''quality control'' with ''quality assurance.'' We believe that the term quality assurance more accurately reflects a system that is intended to ensure the quality of active ingredients, components, and other elements of PET drug production through the use of various procedures, tests, analytical methods, and acceptance criteria. Moreover, we believe that this change is consistent with subpart C, ''Quality Assurance,'' of the PET CGMP regulations, and specifically with § 212.20(e), which requires PET drug producers to establish and follow written quality assurance procedures.

7. Sub-batch

(Comment 23) Three comments recommended that § 212.1 include a definition of ''sub-batch,'' as defined in USP Chapter 823: ''A quantity of PET drug product having uniform character and quality, within specified limits, that is produced during one succession of multiple irradiations, using a given synthesis and/or purification operation.''

(Response) We agree with the comments and have included a definition of sub-batch in § 212.1, using the definition in USP Chapter 823 to which the comments referred.

D. Application (Proposed § 212.5)

Proposed § 212.5(a) stated part 212 applies only to the production, quality control, holding, and distribution of PET drug products. It further stated that any human drug product that does not meet the definition of a PET drug product must be manufactured in accordance with the CGMP requirements in parts 210 and 211. Proposed § 212.5(a) also stated that part 212 applies to all PET drug products for human use except for investigational and research PET drugs as described in § 212.5(b).

Proposed § 212.5(b) stated that the regulations in part 212 do not apply to investigational PET drugs or drug products for human use produced under an IND in accordance with part 312 and PET drugs or drug products produced with the approval of an RDRC in accordance with part 361. Proposed § 212.5(b) further stated that for such investigational and research PET drugs or drug products, the requirement under the act to follow CGMP is met by producing PET drugs or drug products in accordance with Chapter 823 of the 28th ed. of the USP, which was incorporated by reference in the proposed rule.

As stated in response to comment 1, we have revised § 212.5 to make clear that the PET CGMP requirements apply to PET drugs, not solely to PET drug products. Correspondingly, we have revised § 212.5(b) to state that for

''investigational PET drugs for human use produced under an IND in accordance with part 312'' and ''PET drugs produced with the approval of an RDRC in accordance with part 361,'' the requirement to follow CGMP is met by producing these drugs in accordance with Chapter 823 of the 32d ed. of the USP.

(Comment 24) One comment expressed support for the exclusion of PET drugs studied under an IND or RDRC review from the scope of the PET drug CGMP regulations. However, one comment stated that there is an understanding within the industry, based on experiences with preapproval inspections, that the agency expects that investigational drugs for Phase 3 clinical trials will be produced under CGMP conditions to link the drugs to production of market batches. Therefore, the comment requested that we clarify whether, under § 212.5(b), CGMP will apply to the production of PET drug products for Phase 3 trials.

(Response) Under the proposed rule, investigational and research PET drugs produced in accordance with USP Chapter 823 would be deemed to meet CGMP requirements. As we stated in the preamble to the proposed rule, we believe that it is appropriate to have more flexible CGMP requirements for these drugs during development. Because many PET drugs are produced under an IND or RDRC review and most PET drug producers are familiar with the standards in Chapter 823, adopting USP 32 Chapter 823 as an alternative standard for CGMP for investigational and research PET drugs should make it easier for PET drug producers to comply with the CGMP requirements.

Nevertheless, we agree with the comment that a PET drug producer intending to seek marketing approval for a PET drug or new indication should conduct Phase 3 studies on the drug in accordance with the PET CGMP requirements in part 212. Therefore, we have revised § 212.5(b) to state that for investigational and research PET drugs, the requirement under the act to follow CGMP is met by complying with part 212 or by producing PET drugs in accordance with USP 32 Chapter 823. This revised provision gives producers of investigational and research PET drugs the flexibility of choosing to follow the CGMP requirements in part 212 or meeting the standards in USP 32 Chapter 823, depending on the purposes of the investigation or research with the PET drug.

(Comment 25) One comment stated that because the USP is frequently updated, the regulations should not refer to a specific edition.

(Response) We do not agree with the comment. It would not be appropriate to permit future changes to Chapter 823 to be incorporated into part 212 without conducting notice and comment rulemaking. We believe that the current version of Chapter 823 (in the 32d ed. of the USP) contains appropriate CGMP standards for investigational and research PET drugs. If Chapter 823 is changed in the future, we will consider whether it is appropriate to issue a proposed rule to revise the PET CGMP regulations to incorporate the revisions to the chapter.

E. Personnel and Resources (Proposed § 212.10)

Proposed § 212.10 stated that a PET drug producer must have a sufficient number of personnel with the necessary education, background, training, and experience to perform their assigned functions. It further stated that a PET drug producer must have adequate resources, including facilities and equipment, to enable its personnel to perform their functions.

(Comment 26) One comment remarked that the discussion of proposed § 212.10 in the preamble of the proposed rule stated that a PET production facility having a simple operation that produces only one or two doses each day (or week) of a single PET drug would need fewer personnel and other resources than a facility having a more complex operation that produces multiple PET drugs or a facility producing larger amounts of a PET drug. The comment stated that because there are not likely to be any operations (commercial or noncommercial) that produce only one or two doses each day (or week), the statement unrealistically portrays a simple operation. The comment maintained that the draft guidance on PET CGMP (lines 226 through 230) more accurately defines a small operation as one that produces only one or two batches of a PET drug daily. The comment recommended that the wording in the introduction to the final rule be changed to be consistent with the draft guidance.

(Response) We agree with the comment that it is appropriate to characterize a small PET drug production operation as one that produces only one or two batches each day (or week) of a single PET drug, as stated in the final guidance. We note, however, that it is not unusual for a batch of a PET drug to consist of very few doses.

F. Production and Process Controls (Proposed § 212.50)

1. Master Production and Control Records

Proposed § 212.50(b)(1) through (b)(6) listed certain items of information that would be required in a master production and control record. These included, in proposed § 212.50(b)(6), a statement of acceptance criteria on radiochemical yield, i.e., the minimum percentage of yield beyond which investigation and corrective action are required.

(Comment 27) One comment recommended deletion of this requirement. The comment stated that radiochemical yields can have significant variations in a well-controlled PET manufacturing operation and that many factors can affect the yield. The comment maintained that radiochemical yield is not a significant predictor of product quality. According to the comment, discarding useful product and having to produce another lot based on arbitrary radiochemical yield increases radiation exposure without predicting product quality.

(Response) We do not agree with the comment. Although a low radiochemical yield would not necessarily require the rejection of a batch, low radiochemical yield can be a useful predictor of control of the production process for a PET drug. For example, a low radiochemical yield might result from a leak in the production system that introduces an extraneous substance, resulting in a contaminated product that might not be easily purified. Repeated occurrences of low radiochemical yield or a downward trend in radiochemical yield should prompt an investigation and, if necessary, corrective action. We have revised § 212.50(b)(6) to require a statement of action limits, rather than acceptance criteria, on radiochemical yield, because exceeding the radiochemical yield limits would require investigation and corrective action but not necessarily rejection of the batch.

2. Batch Production and Control Records

Proposed § 212.50(c)(1) to (c)(11) listed the items of information that must be included on a batch production and control record. These included, in proposed § 212.50(c)(6), the dates and time of production steps.

(Comment 28) One comment stated that recording the time of critical production steps is appropriate but recording the date and time of each step is not necessary. The comment stated

that the manufacture of a PET drug takes place over a few hours at most. The comment maintained that recording the date once on the batch record is sufficient unless production spans 2 days. The comment also recommended that recording the time be limited to critical steps, contending that doing so for all steps would de-emphasize critical steps.

(Response) We believe that it is appropriate to record the date of each production step on the batch production and control record. However, we agree with the comment that the time need only be recorded for each critical production step (e.g., start of irradiation, beginning and end of synthesis). Therefore, we have revised § 212.50(c)(6) to require inclusion of the dates of production steps and times of critical production steps.

G. Laboratory Controls (Proposed § 212.60)

Proposed § 212.60(g) required each laboratory performing tests related to the production of a PET drug to keep complete records of all tests performed to ensure compliance with established specifications and standards, including examinations and assays. The specific records required were set forth in proposed § 212.60(g)(1) through (g)(5). Proposed § 212.60(g)(1) required a description of the sample received for testing, including its source, the quantity, the batch or lot number, the date (and time, if appropriate) the sample was taken, and the date (and time, if appropriate) the sample was received for testing. Proposed § 212.60(g)(2) required a description of each method used in the testing of the sample, a record of all calculations performed in connection with each test, and a statement of the weight or measurement of the sample used for each test. Proposed § 212.60(g)(3) required a complete record of all data obtained in the course of each test, including the date and time the test was conducted, all graphs, charts, and spectra from laboratory instrumentation, properly identified to show the specific component, in-process material, or drug product for each lot tested. Proposed § 212.60(g)(4) required a statement of the results of tests and how the results compare with established acceptance criteria. Proposed § 212.60(g)(5) required the initials or signature of the person performing the test and the date on which the test was performed.

(Comment 29) Several comments objected to the proposed requirements for test records, in particular the description of the sample received for testing. One comment stated that the required documentation needs streamlining because of limited time and human resources during production and quality control activities. The comment maintained that the proposed level of documentation is excessive in the presence of comprehensive and verified procedures.

Several comments maintained that the proposed requirements are excessive because the testing is conducted in the same room as, contiguous to, or in close proximity to the production area, often by the same personnel responsible for the production of the drug. One comment recommended that the guidance include a reduced requirement for when testing is performed contiguous with PET drug production.

One comment stated that the reference to the batch or lot number in proposed § 212.60(g)(1) is more than adequate. Two comments recommended revising § 212.60(g)(1) to state simply that samples received for testing must be suitably identified to avoid mix-ups.

Three comments maintained that the information that would be required under proposed § 212.60(g)(1) is already in the master formula and/or in individual batch records. One comment recommended that we clarify that existing documentation could satisfy the requirements for test records in § 212.60(g).

One comment recommended having separate test record requirements for: (1) Components, in-process materials, and PET drug products tested in a facility physically external to the manufacturing facility and (2) PET drug products tested internally. For the first group, the test record requirements in proposed § 212.60(g)(1) through (g)(5) would apply. The requirements for PET drug products tested internally would be the same, except that in lieu of a provision requiring a description of the sample received for testing, there would be a provision stating that ''[t]est records for PET drug products tested internally shall be inclusive to the batch record for that PET drug product.''

(Response) We agree with the comments that the proposed requirements for describing the sample received for testing should be changed to reflect the typical production and testing circumstances described by the comments. Therefore, we have revised § 212.60(g)(1) to require a ''suitable identification of the sample received for testing.'' Suitable identification of the sample means information that will provide complete traceability of the sample to the batch or lot from which the sample was taken. We agree with the comments that a PET drug producer might be able to meet this requirement by referring to information in the master production and control record or the batch production and control record. The revised § 212.60(g)(1) reflects that the information needed to identify a sample might vary depending on the circumstances under which production and testing are conducted. In particular, the revised provision obviates the need for separate provisions for: (1) Components, in-process materials, and PET drug products tested in a facility physically external to the manufacturing facility and (2) PET drug products tested internally.

H. Controls and Acceptance Criteria (Proposed § 212.70)

1. Specifications

Proposed § 212.70(a) would have required a PET drug producer to establish specifications for each batch of a PET drug product, including criteria for determining identity, strength, quality, purity, and, if appropriate, sterility and pyrogenicity.

(Comment 30) One comment stated that it seems more appropriate to set specifications for apyrogenicity rather than pyrogenicity.

(Response) An injectable PET drug product will have as part of its specifications a test and acceptance criteria for pyrogens. Therefore, we have revised § 212.70(a) to refer to ''pyrogens'' rather than ''pyrogenicity.''

In addition, on our own initiative, we have revised § 212.70(a) to state that a PET drug producer must establish specifications for ''each PET drug product'' rather than for ''each batch of a PET drug product.'' We intend the revision to make clear that the specifications are for each PET drug product and that these specifications may not differ from batch to batch of the product.

2. Conformance to Specifications

Proposed § 212.70(c) would have required a PET drug producer, before final release, to conduct laboratory testing of a representative sample of each batch of a PET drug product to ensure that the product conforms to specifications, except for sterility. The proposed provision would have further required that, for a PET drug product produced in sub-batches, at least each initial sub-batch that is representative of the entire batch must conform to specifications, except for sterility, before final release.

(Comment 31) We did not receive any comment specifically referring to proposed § 212.70(c). However, one comment recommended adding a new paragraph (g) to § 212.70 to

accommodate testing of a PET drug product on something less than a per-batch basis. The comment stated that many tests are amenable to daily or skip testing. As an example, the comment referred to FDG F 18. The comment maintained that the bacterial endotoxin test for FDG F 18 always generates a nondetectable result because the alumina cartridge in the FDG production process removes all endotoxins. The comment also claimed that radiation levels for a bombarded target render the target and its contents sterilized by ionizing radiation, and repeated passage of commercial quantities of FDG F 18 through a production process renders the fluid pathway sterilized by ionizing radiation. According to the comment, the sterility assurance level achieved by exposure to ionizing radiation and passage of the active pharmaceutical ingredient through a sterilizing membrane filter renders a retrospective sterility test moot. Therefore, the comment recommended adding a provision stating as follows: ''You must conduct process verification and establish procedures for finished product testing on a daily basis rather than every batch of finished product.''

(Response) We do not agree with the comment that the bacterial endotoxin test for FDG F 18 always generates a nondetectable result; we are aware of at least one instance in which a batch of FDG F 18 was recalled due to endotoxin problems. However, we agree that finished-product testing is not the only method that can be used to demonstrate that a PET drug product conforms to its specifications. Other approaches may be appropriate for certain specifications. To reflect this, we have revised § 212.70(c) to require, before final release, ''an appropriate laboratory determination'' to ensure that each batch of a PET drug product conforms to specifications, except for sterility. For a PET drug product produced in sub-batches, before final release, ''an appropriate laboratory determination'' is required to ensure that each sub-batch conforms to specifications, except for sterility.

Examples of PET drug product specifications—the measurements of critical quality attributes that are indicative of the product's safety and effectiveness—include radiochemical identity and purity (including chiral purity), assay (including radioconcentration), specific activity, radioactive and non-radioactive impurities, and sterility. An appropriate laboratory determination to ensure that each batch (or, for a product produced in sub-batches, each sub-batch) of a PET drug product conforms to specifications under § 212.70(c) could involve the following:

- Finished-product testing of each batch;
- In-process testing of an attribute that is equivalent to finished-product testing of that attribute;
- Continuous process monitoring of attributes with statistical process controls;
- Some combination of these approaches.

Using finished-product testing alone would require testing each batch of a PET drug product for conformance to all specifications. In-process testing might involve use of an on-line test to determine whether an attribute meets an appropriate acceptance criterion, provided that the relevant attribute does not change during the production of the finished product. Under this scenario, the in-process testing of an attribute could be an adequate substitute for the finished-product testing for that attribute. Continuous process monitoring with statistical process controls involves comprehensive testing of attributes using on-line monitoring and corresponding adjustments to prevent an upward or downward drift in batch-to-batch measurements of an attribute. Depending on the particular PET drug product and specification, any of the suggested approaches might be appropriate for conducting an appropriate laboratory determination to ensure that each batch of the product conforms to the specification. The laboratory determination approach for each specification should be set forth in the product's marketing application.

Although § 212.70(c) addresses conformance to specifications, we recognize that there may be attributes of a PET drug product that, although not as significant as those included in the specifications, are nevertheless important in assessing the quality of the product. Examples of these noncritical attributes might include radionuclidic purity (when potentially contaminating radionuclides do not impact the safety or effectiveness of the drug product), as well as certain low-level nontoxic impurities and class three residual solvents. These noncritical attribute tests, referred to as periodic quality indicator tests (PQITs), are additional to tests conducted for conformance to drug product specifications. A PQIT is performed at predetermined intervals rather than on a batch-to-batch basis. A PET drug producer generally establishes and refines tests of noncritical attributes within its internal quality system. However, the sponsor of a PET drug product should seek approval of a PQIT for a noncritical attribute in the product's marketing application. FDA will review the frequency of PQIT testing during CGMP inspections.

3. Final Release Procedures

Proposed § 212.70(d) stated that a PET drug producer must establish and follow procedures to ensure that a PET drug product is not given final release until the following are done: (1) Appropriate laboratory testing under § 212.70(a) is completed; (2) associated laboratory data and documentation are reviewed and they demonstrate that the PET drug product meets specifications, except for sterility; and (3) a designated qualified individual authorizes final release by dated signature.

At our own initiative, we have revised § 212.70(d) to state that except as conditional final release is permitted in accordance with § 212.70(f), a PET drug producer must establish and follow procedures to ensure that a each batch of a PET drug product is not given final release until the steps in § 212.70(d)(1) through (d)(3) are done. This makes clear that compliance with the conditional final release procedures for a particular batch constitutes an exception to the requirement that each batch comply with final release procedures.

In addition, consistent with the change that we have made to proposed § 212.70(c), we have revised the first criterion in § 212.70(d) (i.e., § 212.70(d)(1)) to require completion of an ''appropriate laboratory determination under paragraph (c)'' rather than appropriate laboratory testing under § 212.70(a).

4. Sterility Testing

Proposed § 212.70(e) stated that sterility testing need not be completed before final release but must be started within 30 hours after completion of production; the 30 hours might be exceeded because of a weekend or holiday. Proposed § 212.70(e) further stated that if the sample for sterility testing is held longer than indicated, the PET drug producer must demonstrate that the longer period does not adversely affect the sample and the test results obtained will be equivalent to test results that would have been obtained if the test had been started within the 30-hour time period. Proposed § 212.70(e) also stated that if the product fails the sterility test, all receiving facilities must be notified of the results immediately; the notification must include any appropriate recommendations and must be documented.

On our own initiative, we have revised the second sentence of § 212.70(e) to clarify that if the sample for sterility testing is held longer than 30 hours (rather than as ''indicated''), the PET drug producer must take the actions specified in that sentence. Also on our own initiative, we have revised § 212.70(e) to state that ''[t]ested samples must be from individual batches and not pooled,'' rather than stating that ''[p]roduct samples must be tested individually and must not be pooled.'' This clarifies that a sample from each batch of a PET drug product must be tested for sterility.

(Comment 32) Several comments objected to the proposed requirement to notify receiving facilities immediately if a PET drug product fails the sterility test. Several comments stated that although detection of a growth in an inoculated media should prompt an investigation, it does not necessarily equate to sterility failure. Two comments stated that an investigation of a test failure should lead to an informed determination as to whether the batch was not sterile or a technical error caused a false positive result, and that notification is justified only if nonsterility is confirmed. Two comments stated that the results of an investigation into a sterility test failure might not be known for 2 to 4 weeks. One comment stated that the notification required by proposed § 212.70(e) would occur several days after administration of the drug product and critical data, such as species identification, would not be available. Three comments stated that immediate, unqualified notification would be alarming and unproductive.

To address concerns about proposed § 212.70(e), four comments recommended that this provision require that receiving facilities be notified if an investigation into a nonconforming sterility test concludes that a drug product was non-sterile. One comment, stating that it was questionable what benefit would be served by notification at this point and what advice would be appropriate and meaningful, asked that we reconsider this requirement or include recommendations in the PET CGMP guidance on what to tell the receiving facility.

(Response) We understand that initial results from conventional sterility tests are not definitive, and we appreciate that it takes some time to investigate a failed test. However, we believe that it is important to convey to the clinician the potential risks to a patient when a PET drug product initially fails to meet a criterion for sterility. We have revised § 212.70(e) to clarify that, if a product fails to meet a criterion for sterility, the PET drug producer must immediately notify all facilities that received the product of the test results and provide any appropriate recommendations. Consistent with the need to keep receiving facilities adequately informed, we have added to § 212.70(e) a requirement that, upon completion of an investigation into a failure to meet a criterion for sterility, the PET drug producer must notify all facilities that received the product of the findings from the investigation.

(Comment 33) Two comments, noting that the draft guidance states that sterile PET drugs can be distributed after initiation of an endotoxin test but before obtaining test results (provided the results are determined to meet acceptance criteria before the drug product is administered to humans), requested that this procedure be included in the regulations.

(Response) We do not believe that it necessary to establish a regulation as requested. Under § 212.70(c), endotoxin testing must be completed before final release of a PET drug product. The guidance simply clarifies that, because of the short half-lives of many PET drugs, a product can be ''distributed under control after a pharmacopeial bacterial endotoxin test is initiated. However, the endotoxin results should meet the acceptance criteria before administering the product to humans.'' Distribution under control does not constitute final release of the product; final release can only occur after the completion of the laboratory determination to ensure conformance to specifications (except for sterility). Distribution control procedures, including any agreements between the PET drug producer and receiving facilities, should be specified in a standard operating procedures (SOPs) document.

5. Conditional Final Release

Proposed § 212.70(f) set forth the conditions under which conditional final release of a PET drug product would be permitted.

a. *Conditions for release (proposed § 212.70(f)(1)).* Proposed § 212.70(f)(1) stated that if the PET drug producer cannot complete one of the required finished product tests for a PET drug product because of a breakdown of analytical equipment, the producer may approve the conditional final release of the product if it meets the following conditions (listed in proposed § 212.70(f)(1)(i) through (f)(1)(vii)):

- The PET drug producer has data documenting that preceding consecutive batches, produced using the same methods used for the conditionally released batch, demonstrate that the conditionally released batch will likely meet the established specifications;
- The PET drug producer determines that all other acceptance criteria are met;
- The PET drug producer immediately notifies the receiving facility of the incomplete testing;
- The PET drug producer retains a reserve sample of the conditionally released batch of drug product;
- The PET drug producer completes the omitted test using the reserve sample after the analytical equipment is repaired and documents that reasonable efforts have been made to ensure that the problem does not recur;
- If an out-of-specification result is obtained when the reserve sample is tested, the PET drug producer immediately notifies the receiving facility; and
- The PET drug producer documents all actions regarding the conditional final release of the drug product, including the justification for the release, all followup actions, results of completed testing, all notifications, and corrective actions to ensure that the equipment breakdown does not recur.

i. *Circumstances justifying conditional final release (proposed § 212.70(f)(1)).* At our own initiative, we have revised § 212.70(f)(1) to clarify that conditional final release may be appropriate when a PET drug producer cannot complete one of the required finished-product tests for a particular batch of a PET drug product because of a malfunction involving analytical equipment (proposed § 212.70(f)(1)(i) and (f)(i)(iv), but not (f)(1), had referred to conditionally released batches).

(Comment 34) Three comments objected to the proposed criteria for conditional final release because they believe the criteria are partially inconsistent with the Tests and Assays section of the USP's General Notices. Two comments stated that according to the Tests and Assays section, process validation and in-process controls may provide greater assurance that a drug product conforms to release specifications than conducting each test on every final product batch. One comment stated that proposed § 212.70(f)(1) inaccurately implies that every pharmacopeial test is required before release to assure quality. Two comments recommended that § 212.70(f)(1) be revised to state that if a PET drug producer cannot complete one of the finished-product release tests on a timely basis because of an analytical equipment breakdown,

inconclusive result, or invalid condition, the producer may approve conditional release of a batch if there is historical evidence to substantiate that the product will likely meet the established specifications. One comment stated that such a release test should be one that is stipulated in an approved application. One comment also stated that the producer should be required to implement written procedures that: (1) Determine which finished-product tests are applicable for conditional release, (2) specify the steps required to correct the cause of the invalid condition or equipment failure in a timely fashion, and (3) document all conditional release activities.

(Response) We agree with the comments that the USP does not require the completion of every pharmacopeial test on each product batch prior to release of the batch. Instead, the USP states that every article, when tested, should conform to the monograph. However, § 212.70(c) requires that the PET drug producer conduct an appropriate laboratory determination to ensure that each batch of a PET drug product conforms to specifications, except for sterility, before final release of the product. Although many of the critical laboratory tests must be completed before final release, we agree that it is appropriate to broaden the circumstances under which a PET drug producer may approve the conditional final release of a product. Therefore, we have revised § 212.70(f)(1) to allow conditional final release if the PET drug producer cannot complete one of the required finished-product tests for a PET drug product because of a malfunction involving analytical equipment, rather than solely a complete breakdown of such equipment. For example, gas chromatography equipment might be operating but producing inaccurate results because of some malfunction. Conditional release due to an equipment malfunction might be appropriate when test results are atypical but other process indicators show that release of raw materials and production and purification process events have occurred as expected. For example, a PET drug producer might observe a baseline drift in a high pressure liquid chromatography (HPLC) analysis for a product, but if the peak shape is similar to what is normally seen and the production and purification events have progressed as expected, it might be reasonable to conclude that there is an equipment malfunction, rather than that the product is contaminated. In such a case, conditional final release of the product would be appropriate. For these reasons, the revised § 212.70(f)(1) more accurately reflects the range of circumstances under which conditional final release might be appropriate.

However, we do not agree with the proposal to allow conditional final release when there is an ''inconclusive result'' or an ''invalid condition,'' because those terms are so broad and vague that they might permit conditional final release when there is too much uncertainty about the safety and quality of the drug product. For similar reasons, we do not believe that it is appropriate to allow each PET drug producer to determine which finished-product tests may be omitted under conditional final release. We do not believe it is necessary to require that the approved application specify all the tests that need not be completed for conditional final release, as long as conditional final release is limited to circumstances in which there is a malfunction involving analytical equipment.

In addition, we do not believe it is necessary for § 212.70(f) to specifically require that PET drug producers have written procedures for conditional final release, as requested by one comment, because the provision itself essentially states those procedures. Consistent with the comment, however, § 212.70(f)(vi) requires documentation of all actions regarding conditional final release, including corrective actions to prevent recurrence of a particular malfunction involving analytical equipment.

We have revised the definition of ''conditional final release'' in § 212.1 to correspond to this change by replacing ''breakdown of analytical equipment'' with ''malfunction involving analytical equipment.''

ii. *Notification of incomplete testing (proposed § 212.70(f)(1)(iii)).* (Comment 35) Several comments recommended deletion of the requirement in proposed § 212.70(f)(1)(iii) to immediately notify the receiving facility of incomplete testing. Four comments stated that the personnel at the receiving facility are not knowledgeable of the conditional release allowance and lack the expertise to interpret the meaning of such a release in the context of patient safety and product efficacy. The comments stated that notifying the receiving facility in these circumstances would cause uncertainty and undue apprehension, which would not serve the best interest of patients. Three comments stated that other provisions in proposed § 212.70(f)(1) provide adequate protection to patients; for example, proposed § 212.70(f)(1)(vi) provides for immediate notification of the receiving facility if subsequent testing reveals an out-of-specification result.

(Response) We agree that immediate notification of the receiving facility of incomplete product testing would not provide sufficient information to make the requirement worthwhile. Therefore, we have deleted this condition from § 212.70(f)(1).

iii. *Completion of omitted test and efforts to ensure that the problem does not recur (proposed § 212.70(f)(1)(v)).* At our own initiative, we have revised § 212.70(f)(1)(v) (now § 212.70(f)(1)(iv)) to require that a PET drug producer promptly correct the malfunction of analytical equipment, complete the omitted test using the reserve sample after the malfunction is corrected (rather than after the analytical equipment is repaired, consistent with the change to § 212.70(f)(1)), and document that reasonable efforts have been made to prevent recurrence of the malfunction. In connection with this change, we have added § 212.70(f)(3), which states that a PET drug producer may not release another batch of PET drug product following the conditional release of a batch of the product until the producer has corrected the problem concerning the malfunction of analytical equipment and completed the omitted finished-product test. We believe that these changes are appropriate to provide assurance that patients receive safe and effective PET drug products. We conclude that these changes will not impose a significant additional burden on PET drug producers because we believe that in most of the rare instances in which a malfunction of analytical equipment occurs, PET drug producers seek to quickly correct the malfunction and typically do not release additional batches of the drug until the problem is corrected. In addition, many medical facilities that produce and administer PET drugs may be able to obtain PET drugs for their patients from other PET drug producers while they are correcting an equipment malfunction in accordance with § 212.70(f)(1)(iv). For these reasons, we have revised § 212.70(f)(1)(iv) and added § 212.70(f)(3) as stated.

(Comment 36) Regarding completion of the omitted test under proposed § 212.70(f)(1)(v), two comments stated that, depending on when analytical equipment is repaired, the PET drug producer might not be able to obtain meaningful data for testing (e.g., radionuclidic identity or purity) because the radioactivity of the radionuclide might be decayed to background level. Therefore, the comments recommended revising the provision to state that the

PET drug producer should complete the omitted test, if possible, using the reserve sample after the analytical equipment is repaired.

(Response) Although we agree that some critical tests cannot be performed at a later time (i.e., after correction of an analytical equipment malfunction) because of the short half-life of a product, we do not believe that it is appropriate to revise § 212.70(f)(1)(v) to require completion of the omitted test only ''if possible'' after the malfunction is corrected. With respect to radionuclidic identity, a dose calibrator is required for testing. If the dose calibrator is not functioning properly, we believe that the dose of the product cannot be accurately measured. As for radionuclidic purity, we believe that it is possible to conduct the test on a decayed sample of the product. We recommend that PET drug producers develop alternate tests for specifications for which they conclude it is not possible to conduct a particular test after an analytical equipment malfunction has been corrected. For example, if a dose calibrator malfunctioned and the activity of a product could not be assayed, a sample of known dilution could be counted using other equipment, and the activity concentration could be determined by correcting for counting efficiency and dilution.

(Comment 37) Three comments stated that it will never be possible to ''ensure'' that a breakdown of analytical equipment will not recur, as expected in proposed § 212.70(f)(1)(v). Two comments recommended substituting ''prevent recurrence of the problem'' for ''ensure that the problem does not recur.'' One comment recommended substituting ''document the repair and corrective and preventive actions'' for ''document that reasonable efforts have been made to ensure that the problem does not recur.''

(Response) We agree that it is more appropriate to require a PET drug producer to document that reasonable efforts have been made to prevent recurrence of the malfunction involving analytical equipment. Therefore, we have revised § 212.70(f)(1)(v) (now § 212.70(f)(1)(iv)) accordingly.

iv. *Notification of an out-of-specification result (proposed § 212.70(f)(1)(vi)).* (Comment 38) One comment recommended deletion of the requirement for the PET drug producer to immediately notify the receiving facility if the producer obtains an out-of-specification result when testing the reserve sample. The comment stated that personnel at the receiving facility would not have sufficient understanding of such regulatory action or expertise to decide whether to administer the drug. The comment stated that such notification would create confusion and undue concern at the receiving facility.

(Response) We do not agree. Notifying receiving facilities of out-of-specification results so that personnel can take appropriate action, usually to prevent administration of the drug, is consistent with the intent of CGMP to ensure that patients receive appropriate PET drugs. This differs from the situation involving notification of incomplete product testing under proposed § 212.70(f)(1)(iii), in which it is still possible that the batch may actually conform to specifications and therefore be appropriate for administration to patients.

v. *Documentation of actions regarding conditional final release (proposed § 212.70(f)(1)(vii)).* Consistent with the changes to § 212.70(f)(1) and (f)(1)(iv), we revised § 212.70(f)(1)(vii) (now § 212.70(f)(1)(vi)) to require documentation of all actions regarding the conditional final release of the drug product to prevent recurrence of the malfunction involving analytical equipment (rather than to ensure that the equipment breakdown does not recur).

b. *Inability to perform radiochemical identity/purity test (proposed § 212.70(f)(2)).* Proposed § 212.70(f)(2) stated that even if the criteria in § 212.70(f)(1) were met, a PET drug producer could not approve the conditional final release of a PET drug product if the breakdown in analytical equipment prevented the performance of a radiochemical identity/purity test.

(Comment 39) One comment stated that § 212.70(f)(2) should also disallow conditional final release if the breakdown in analytical equipment prevents the determination of the specific activity of a PET drug product with mass-dependent target localization and/or potential to elicit a physiological effect, where the specific activity limit is quantitatively expressed.

(Response) We agree. Therefore, we have revised § 212.70(f)(2) to state that a PET drug producer may not approve the conditional final release of a product if the malfunction involving analytical equipment prevents the performance of a radiochemical identity/purity test or prevents the determination of the product's specific activity.

I. Actions To Be Taken If Product Does Not Conform to Specifications (Proposed § 212.71)

Proposed § 212.71 addressed the actions that a PET drug producer must take if a batch of a PET drug product does not conform to specifications. Proposed § 212.71(d) stated that, if appropriate, a PET drug producer may reprocess a batch of a PET drug product that does not conform to specifications. The proposed provision further stated that if material that does not meet acceptance criteria is reprocessed, the PET drug producer must follow preestablished procedures (set forth in production and process controls) and the finished product must conform to specifications, except for sterility, before final release.

(Comment 40) One comment asked whether such reprocessing was required to be specified in the approved NDA for the PET drug product or whether it could be done according to an internal process for the establishment of production and process controls.

(Response) Reprocessing a batch of PET drug product that did not conform to specifications is only appropriate if the reprocessing is included in the approved NDA or ANDA for the product. To clarify this provision, we have revised the second sentence of § 212.71(d) to state that if material that does not meet acceptance criteria is reprocessed, the PET drug producer must follow ''procedures stated in the product's approved application'' (which could be either an NDA or ANDA).

J. Complaint Handling (Proposed § 212.100)

1. Written Complaint Procedures

Proposed § 212.100(a) stated that a PET drug producer must develop and follow written procedures for the receipt and handling of all complaints concerning a PET drug product.

(Comment 41) Three comments objected to the scope of proposed § 212.100(a). The comments stated that it would be inappropriate for § 212.100(a) to include complaints involving such matters as pricing issues, ordering errors, and shipping delays. One comment stated that the provision should be limited to complaints concerning the quality or purity of, or possible adverse reactions to, a PET drug product. In addition to recommending inclusion of complaints about adverse reactions, one comment suggested including complaints about the quality or labeling of a PET drug product and another comment recommended including complaints about the quality or efficacy of a PET drug product.

(Response) We agree with the comments that PET drug producers should not be required to have written procedures regarding all conceivable

complaints about a PET drug product. Therefore, we have revised § 212.100(a) to state that a PET drug producer must develop and follow written procedures for the receipt and handling of all complaints concerning the quality or purity of, or possible adverse reactions to, a PET drug product.

2. Returned Products

Proposed § 212.100(d) stated that a PET drug product that is returned because of a complaint may not be reprocessed and must be destroyed in accordance with applicable Federal and State law.

(Comment 42) One comment asked us to clarify whether proposed § 212.100(d) was intended to allow the reprocessing of returns that are not the result of complaints.

(Response) We can conceive of no circumstances under which a returned PET drug product could be reusable. Therefore, we have revised § 212.100(d) to state that a PET drug product that is returned because of a complaint or for any other reason may not be reprocessed and must be destroyed in accordance with applicable Federal and State law.

K. Records (Proposed § 212.110)

Proposed § 212.110(c) stated that a PET drug producer must maintain all records and documentation referenced in other parts of the regulation for a period of at least 1 year from the date of final release, including conditional final release, of a PET drug product. On our own initiative, we revised this provision to clarify that it requires the maintenance of all records and documentation referenced in part 212.

IV. Analysis of Economic Impacts

We have examined the potential economic impact of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize the net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is not an economically significant action under the Executive order.

Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize any significant economic impact of a rule on small entities. We project that this rule may have a significant effect on a substantial number of small entities. A regulatory flexibility analysis explaining this finding is presented below.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. We do not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Regulatory Benefits

Comments on the proposed rule did not focus specifically on our description of the benefits of the proposed CGMP regulations for PET drugs. Further, none of the changes made to the final rule cause us to re-examine these benefits. We therefore present the same qualitative description of the benefits of the final rule.

The Modernization Act requires us to establish appropriate good manufacturing practices for PET drugs. Without minimum manufacturing standards, unintentionally inferior PET drugs may be produced for human use. The short half-life characteristic of PET drugs often limits extensive and complete finished product testing prior to administration to humans. Moreover, recalls are usually impossible due to this short half-life, which can range from minutes to hours. Most PET drugs are marketed without FDA approval, and we have not received any reports of adverse events. Official reports that can be relied upon to demonstrate or project the actual number of adverse events related to these products therefore do not exist. Tracing infections possibly caused by contaminated PET drugs to patients is difficult since there are a multitude of other factors that can cause infections in hospitalized patients, as well as a time delay before infection presents itself. Lacking this information for the proposed rule, we were unable to estimate how much this rule might reduce the risk of adverse events associated with PET drugs and consequently improve public health. As stated previously, comments on the proposed rule did not offer any data concerning the expected level of risk reduction due to compliance with the CGMP requirements. Because the final rule is not substantially different from the proposed rule, we maintain that the final rule will reduce, by an unquantifiable amount, the risk of adverse health events associated with PET drugs.

This rule creates minimum manufacturing standards to ensure the safety, identity, strength, quality, and purity of PET drugs. Building quality into the production process permits early detection and correction of problems and promotes continuous improvement. Activities such as developing specifications may result in increased reliability and uniformity of PET drugs to patients. Ultimately, this rule is expected to result in a reduction in adverse reactions to PET drugs and an improvement in overall public health.

B. Regulatory Costs

Public comments did not specifically address the methodology of the analysis of impacts section that was published in the proposed rule. As such, we retain it for the analysis of the final rule. For the proposed rule, we determined that many PET drug producers had already adopted some form of good manufacturing practices or SOPs. The Modernization Act required that compounded PET drugs conform to USP compounding standards and official monographs for PET drugs until CGMP regulations are established for PET drugs. For producers already following required USP standards, we expected average compliance costs associated with the proposal to be small.

We proposed that the CGMP rule would affect all PET drug producers, especially those affiliated with hospitals and academic medical centers, as well as the small number of unaffiliated regional producers that produce FDG F 18. We believed that most of the large corporate PET drug producers and hospital PET drug producers associated with these corporate entities already complied to a great degree with the proposed CGMP rule. Based on our consultations with industry (including PET drug producers and professional associations) through direct contact as well as public comments at public meetings and previously published preliminary proposed rules, we made a general assessment of the current operational status of PET drug producers for the proposed rule.

We estimated that the proposed rule would affect 51 producers of PET drugs, operating 101 establishments. Fifteen of these producers owned or operated 65

commercial establishments (16 of which are associated with academic hospitals). Of these 15 producers, 11 were regional or local unaffiliated producers that had begun to produce PET drug products in recent years. The other four commercial producers were corporations, each of which had multiple establishments. In total, these 4 corporate producers operated 48 establishments. The remaining 36 producers were part of academic or hospital institutions (see table 1 of this document).

TABLE 1.—PET DRUG PRODUCERS

Producer Type	No. of Producers	No. of Establishments
Hospital or Academic[1]	36	36
Commercial—Regional	11	17
Commercial—Corporate[2]	4	48
Total	51	101

[1] Sixteen hospital producers operated by commercial firms are counted under Commercial-Corporate.
[2] One producer may not be a corporation but is included here due to its multiple sites and longer history of PET drug production.

C. Compliance Requirements

As with the CGMP proposed rule, the final rule imposes compliance requirements resulting in two types of costs. From the date of publication of the final rule until the effective date, PET drug producers will incur one-time costs as each producer is brought into compliance. In succeeding years, each producer is expected to incur only annual costs related to maintaining compliance.

The following sections contain the general requirements of the final rule:

- Section 212.10: Require qualified and trained personnel.
- Section 212.20: Establish SOPs to define quality assurance.
- Section 212.30: Establish SOPs and prepare documents related to installation, cleaning, qualification, and maintenance of facilities and equipment.
- Section 212.40: Establish SOPs and prepare documents on the receipt, identification, storage, handling, testing, and approval of components and drug product containers and closures. Establish specifications for the components, containers, and closures.
- Section 212.50: Establish written production and process control procedures (including in-process parameters) for production of PET drugs. Prepare master production record and batch record.
- Section 212.60: Establish written procedures and schedules for the calibration, cleaning, and maintenance of laboratory testing equipment. Establish testing procedures for components, in-process materials and finished PET drug products.
- Section 212.61: Establish written procedures to assess the stability characteristics of PET drug products.
- Section 212.70: Establish acceptance criteria and written procedures to control the release of products. Prepare SOPs to establish system suitability of each test. Prepare documents to record tests performed on the PET drug product for final release.
- Section 212.71: Establish procedures to investigate the reason for product nonconformance.
- Section 212.80: Establish templates for labeling.
- Section 212.90: Establish procedures and documents for the distribution of PET drug products.
- Section 212.100: Establish procedures for the receipt and handling of complaints regarding a PET drug product.

1. Impact of Changes to the Proposed Rule

Among the revisions we made to the proposed rule are several changes that could affect the compliance costs of the rule. We revised § 212.50(c)(6) to require that the time of production of PET drugs be recorded only for critical production steps. This is expected to slightly reduce the burden of the final rule on PET drug producers. We revised § 212.60(g)(1) to require only that any sample of a PET drug product received by a laboratory for testing be suitably identified, rather than requiring a description of the sample, including information that may already be included in the master production and control record. Under this change, a reference to the information in the master production and control record would simplify the identification procedure by eliminating the need for an employee to re-enter identical data, which would slightly reduce labor costs for PET drug producers.

We revised § 212.70(c) to allow for more flexibility in the determination of batch specificity conformity by not requiring finished-product testing in all circumstances. This change represents another slight reduction in compliance costs. We revised § 212.70(e) to require that, upon completion of an investigation into the failure to meet a criterion for sterility, all facilities that received the PET drug product be notified of the findings of the investigation. Because providing this notification appears to be the current practice among PET drug producers, no additional compliance costs are expected to result from this change. We slightly reduced potential compliance costs under § 212.70(f)(1) by broadening the circumstances under which conditional final release is permitted to include when there is a malfunction involving analytical equipment (instead of only when a complete breakdown occurs). Our deletion from § 212.70(f)(1) of the requirement that the PET drug producer immediately notify the receiving facility if incomplete testing occurs also slightly reduces compliance costs. Finally, we revised § 212.70(f)(2) to prohibit approval of conditional final release of a PET drug product if an equipment malfunction prevents the determination of the product's specific activity. Although this revision specifies another circumstance under which conditional final release of a PET drug product is not permissible (in addition to when a malfunction prevents the performance of a radiochemical identity/purity test), the change is consistent with current practice and therefore creates no additional compliance burden.

For the annual costs of the proposed rule, we developed estimates based on input from agency resources that a quality control manager of a PET drug production facility would put forth from 3 to 7.5 additional labor hours weekly to comply with the CGMP regulations. The changes to the final rule outlined

above would likely result in a slightly smaller burden due to reduced labor hours that may total only a few minutes weekly. Since the size of the reduction in burden is so small and likely within any range of uncertainty inherent in the estimates made for the proposal, we have not changed the estimated labor hour increases in the analysis of this final rule.

We expect some variation in the exact SOPs that PET drug producers will need to create or revise to comply with the rule. We expect that the various types of producers already comply with aspects of the rule to different extents. The hospital PET drug producers and the independent regional commercial producers will likely require more time and effort to comply than will the group of corporate producers. Because of this, we estimated average compliance efforts for two separate groups based on expected current compliance levels—the corporate producers and the hospital and regional commercial producers.

2. Costs to Establish SOPs

All PET drug producers are expected to incur some costs associated with interpreting the rule, determining the manner of compliance, and implementing the compliance method. These costs will be included in the efforts of a designated individual or individuals who will be primarily responsible for bringing each PET drug production establishment into compliance. In this case, we included any general administrative efforts in the time required to establish and write the SOPs for the previously listed requirements and to prepare templates for CGMP documentation.

The document titled ''Sample Formats for Chemistry, Manufacturing, and Controls Sections''[1] provides guidance that may be helpful in preparing master production records, finished-product release testing records, and incoming component tracking and testing records. PET drug producers will have the option of choosing their own format (and the amount of detail) as long as essential information required by the CGMPs is included. We believe that the CGMP guidance will aid PET drug producers that have little or no experience in creating these documents, helping to reduce compliance costs.

For the final rule, we have increased all employment costs by about 21.7 percent to account for the employment cost increase from 2001 (the year for which we estimated salary and labor costs) to 2007.[2] We estimate that all hospital and regional commercial producers will need from 3 to 5 months to write and establish the SOPs, even with the guidance provided. We assume that the employee responsible for writing the SOPs will be in a management position, either in quality assurance or elsewhere, with a salary of up to $121,700 per year; we include an additional 35 percent for employee benefits and other costs for an annual cost per employee of $164,300 ($121,700 x 1.35). The cost of an average 4-month effort will therefore amount to $54,800 for each hospital and regional commercial PET drug producer.[3]

Although most corporate PET drug producers are said to have a complete set of SOPs, we assume each will expend some time to verify its compliance with the rule and make minor adjustments to their SOPs. We estimate that it will take, on average, 1 month for an individual to verify compliance with the rule and make any needed adjustments to the SOPs. This will result in a cost of approximately $13,700 per corporate PET drug producer, again using an estimated salary and benefits of $164,300 per year. The smaller burden for corporate PET drug producers compared with hospitals and regional producers is due to the current high compliance rates expected at the corporate establishments.[4] We also assume that corporate producers with multiple manufacturing sites will amend a single set of SOPs to cover all of their production sites. Since there are currently four corporate producers of PET drugs, the cost of the SOP revisions is estimated at $54,800 (4 times $13,700).

The SOP establishment or revision work could be performed by company personnel or an outside consultant or contractor. Although we predict that the use of an outside consultant or contractor will be more likely at the hospital and regional commercial PET drug producers, we do not expect the total cost of this compliance effort to vary considerably.

Producers also are expected to provide some additional training to at least one person on revisions made to current procedures to comply with the CGMP rule. While we do not think extensive training will be necessary at most establishments, we projected that one person at each establishment could need up to 1 week of additional training. The cost of this additional training amounts to about $319,000 (101 establishments times 1 week at $164,300 per year).

The total cost for initial compliance associated with writing the SOPs and creating document forms amounts to approximately $2.95 million. The 47 hospital and regional commercial producers will incur a total of about $2.75 million (47 producers times $54,800 plus 53 establishments times $3,200). The 4 corporate producers will incur a total of about $207,000 (4 producers times $13,700 plus 48 establishments times $3,200). Annualizing the total one-time cost over 5 years at a 7 percent discount rate results in annualized costs of about $719,000.

Once procedures are established and documents are in place to record PET drug production and events associated with routine production of PET drugs, we expect there to be some additional costs for the day-to-day implementation of the CGMP provisions. Periodic audits conducted by company personnel to ensure compliance with current procedures will have to be expanded to include any provisions with which the company is not already in compliance (for example, tracking and recordkeeping of incoming components, proper documentation of production and laboratory testing, tracking, investigation and documentation of products not meeting specifications). Additional time will also be spent updating the SOPs as the equipment and procedures used in the manufacture of PET drugs are upgraded and refined.

We project the day-to-day implementation of the CGMP rule will require, at most, one to two additional hours per day for an individual at each hospital or regional commercial producer. Using the midpoint of this range results in 2.25 additional months of labor each year. Using the same estimated annual salary ($121,700 plus benefits), 2.25 months of labor equates to about $30,800 in annual costs to each PET drug production establishment, or about $1.63 million for all 53 hospital and regional commercial producer establishments.

Our assessment of corporate PET drug producers is that they already comply substantially with the rule. For these

[1] The document is an attachment to the guidance for industry entitled ''PET Drug Applications—Content and Format for NDAs and ANDAs: Fludeoxyglucose F 18 Injection, Ammonia N 13 Injection, Sodium Fluoride F 18 Injection'' (available on the Internet at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*).

[2] U.S. Department of Labor, Bureau of Labor Statistics, private industry, total compensation.

[3] Salary represents upper range of estimate (intended to not underestimate costs) provided at FDA site visit to a commercial PET drug producer on October 2, 2001. Although there is uncertainty concerning salaries paid by academic or hospital producers, we assume they would pay a salary similar to those of corporate producers.

[4] Labor hour estimate from FDA site visit to a PET drug producer on October 2, 2001.

producers, we project that one production individual will expend an additional 1 month of effort over the course of each year (about 3 hours per week) to comply with the rule. This month will result in each corporate PET drug producer incurring about $13,700 in additional annual costs, totaling $657,000 for the 48 corporate PET drug production establishments. Some producers will probably opt to use an outside consultant to manage the implementation of the new regulations in the first year. Although we do not know how many producers will hire a consultant, we do not expect this to affect the total cost considerably, as the cost of the consultant would replace the cost of the company employee. Total annual costs for day-to-day implementation for hospitals and regional producers as well as corporate producers are estimated at $2.29 million ($1.63 million plus $657,000).

Producers also are expected to provide some additional training in future years on SOPs that were amended to comply with this CGMP rule. We expect that this training (review for current employees as well as new employees) will be incorporated into current training programs and therefore be less burdensome than the initial training to implement the rule. Nevertheless, we included the cost for annual training for one person per establishment for one-half week. The cost of this additional training amounts to about $160,000 annually (101 establishments times one-half week at $164,300 per year).

Total annual costs associated with daily implementation and training amount to $2.45 million. The 53 hospital and regional commercial establishments will incur a total of about $1.72 million (53 establishments times ($20,800 plus $1,600)). The average cost per facility for these provisions is $32,400. The 48 corporate production establishments will incur a total of about $734,000 (48 establishments times ($13,700 plus $1,600)). The average cost per facility for these provisions is $15,300.

3. Equipment Costs

Based on numerous site visits to PET drug production facilities by FDA personnel, we conclude that the current laboratory facilities and equipment comply with the requirements of the final rule. Therefore, additional costs for laboratory space or equipment will not be incurred in complying with the rule. Further, we believe that the qualification procedures for all current production equipment already occur as a matter of current business practice, and further equipment qualification procedures will not be required.

4. Process Verification Costs

In response to public comments on the preliminary draft proposed rule, we modified the process verification requirements. Not all PET drug product batches that undergo full finished-product testing to ensure that the product meets specifications will be required to verify the production process. Since we believe that all PET drugs that will receive NDA approval in the next few years will undergo finished-product testing, this requirement will not impose any additional burden. In later years, however, some PET drugs products with NDA approval may submit only the initial sub-batch to finished-product testing before release. In such cases, producers will have to document their process verification procedures. Since we do not know how many, if any, PET drugs such as this will be approved in the future, we are unable to estimate any additional burden to the industry from process verification requirements. Nevertheless, we believe current business practice includes process verification, so any burden to producers would result from the need to document and organize the verification activities.

5. Total Costs

Total one-time costs are estimated at about $2.95 million (annualized at $720,000 over 5 years), and annual costs at about $2.45 million (see table 2 of this document).

TABLE 2.—CGMP COSTS BY REQUIREMENT

Rule Requirement	No. of Establishments	Labor (Months)	Wage (Yr. Sal.)[1]	Cost[2]
One-Time Costs				
Establishment/Write SOPs				
Academic PET Producers	47	3	$164,300	$2,574,000
Commercial PET Producers	4	1	$164,300	$55,000
Training on SOPs				
Academic PET Producers	53	.23	$164,300	$168,000
Commercial PET Producers	48	.23	$164,300	$152,000
Total One-Time Costs				$2,949,000
Annual Costs				
Rule Requirement				
Daily Implementation, Audits, Updates				
Academic PET Producers	53	2.25	$164,300	$1,633,000
Commercial PET Producers	48	1.0	$164,300	$657,000
Training				

TABLE 2.—CGMP COSTS BY REQUIREMENT—Continued

Rule Requirement	No. of Establishments	Labor (Months)	Wage (Yr. Sal.)[1]	Cost[2]
Academic PET Producers	53	.11	$164,300	$84,000
Commercial PET Producers	48	.11	$164,300	$76,000
Total Annual Costs				$2,450,000

[1] Salary includes 35 percent increase for benefits.
[2] Cost totals may not sum due to rounding.

As shown in table 3 of this document, the 53 hospital and regional commercial PET drug production establishments will incur about $2.74 million in one-time costs and $1.72 million in annual costs. The annualized (annualized one-time costs plus annual costs) cost per facility is estimated at about $43,600. The 48 corporate PET drug production facilities will incur about $207,000 and $733,000 in one-time and annual costs, respectively. Total annualized (annualized one-time costs plus annual costs) costs per corporate establishment are estimated at about $16,300. Total annualized costs for all producers are estimated at $3,170,000.

TABLE 3.—CGMP COSTS BY TYPE OF ESTABLISHMENT

	One-Time Cost	Annual Cost
Hospital and Regional Commercial Establishments (53)	$2,740,000	$1,720,000
Corporate Establishments (48)	$207,000	$733,000
Total Cost[1]	$2,947,000	$2,453,000
Total Annualized Cost[2]		$3,170,000

[1] Sum of costs may not equal total cost due to rounding.
[2] Total annualized cost equal to total one-time cost discounted at 7 percent over 5 years plus total annual cost.

For the proposed rule, we estimated, with some uncertainty, that 101 PET drug producers were in operation. While preparing the impacts analysis of the final rule, we requested information from an association of radiopharmaceutical manufacturers about the number of PET drug producers. The association responded with a count showing an estimated 135 to 145 sites operating cyclotrons that are capable of producing FDG F 18.[5] We are not certain that each of these 135 to 145 cyclotrons currently produces PET drugs, nor do the data identify the actual sites. However, we use the midpoint of this range, or 140 cyclotron sites, as the upper bound of the range of possible PET drug production sites. The association's data are not as detailed as the data we presented in the proposed rule, as the former do not show the distribution of production facilities among the different establishment types. We will, therefore, retain the relative distribution of production facilities we presented for the proposed rule and increase total industry costs by the relative increase in possible PET drug production sites, or 38.6 percent ((140 sites - 101sites) / 101 sites). If these additional 39 sites produce PET drugs, the total annualized costs would be as high as $4.40 million. Although our estimates of total industry costs would increase due to this adjustment (which we anticipated to some extent in the analysis of the proposed rule by projecting an annual 5-percent increase in the number of facilities), compliance costs per PET drug manufacturing facility will not increase with the larger estimate of total facilities.

We received one comment on our estimate of total costs. The comment expressed concern that subjecting hospitals and research institutions to the same inspection regime as large commercial producers would be unduly onerous, requiring those institutions to shift limited resources away from health care delivery and research to satisfy regulatory obligations that the comment believes are not warranted by clinical or safety considerations. A footnote to the comment stated that the proposed rule's compliance costs (e.g., $2.42 million one-time costs and $2 million in annual costs per hospital or corporate facility) were of particular concern.

We note that the $2.95 million in revised one-time costs and the approximately $2.45 million in revised annual costs represent totals for all PET drug establishments, not individual hospitals or corporate facilities. In addition, the cost figures reflect all costs associated with compliance with PET CGMP requirements, not simply costs related to FDA inspections, which is the focus of the comment's concern. Finally, we have addressed the comment's concern regarding inspections in our response to comment 6 in section III.A of this document.

D. Growth of the PET Industry

Although we do not have reliable estimates of the annual number of PET scans, the number has increased dramatically over the last 10 years, due at least in part to the increased numbers of disease conditions for which both public and private insurers have extended coverage. The number of establishments producing PET drugs, and FDG F 18 in particular, has also increased over this time period. As mentioned previously in this document, the majority of this growth in establishments reflects commercial operations that focus mainly or solely on FDG F 18 production.

As demand for PET scan services and, therefore, PET drugs is expected to continue to increase, we projected compliance costs over the next 10 years for the proposed rule. We did not receive comment on our projection and retain it (with adjustments for

[5] Correspondence to FDA from Council on Radionuclides and Radiopharmaceuticals, Inc., dated October 3, 2006.

employment cost inflation) for the final rule. We cannot confidently predict the number of additional PET drug production runs to meet the additional demand for PET services because of unknown factors. We do not know the number of additional diseases for which PET will be used and be reimbursable in the future or possible increases in size of production batches of PET drugs. Because PET drug producers are not currently producing to capacity, we believe that increased demand will be partially met by increasing production runs and batch sizes at existing establishments rather than proportional increases in the number of PET drug production establishments. We have therefore projected average annual PET drug production establishment increases will range from 3 to 7 percent. Assuming this growth occurs evenly across producer types, this growth rate implies an increase in annualized costs from $3.17 million in year one to $4.15 to $5.84 million in year ten. The PET drug risk reduction resulting from this rule will also apply to the additional volume of PET drug dosages implied by the 3- to 7-percent annual growth rate in PET drug establishments.

E. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities if that rule may have a significant impact on a substantial number of small entities.

1. Objective of the Rule

The implementation of this rule, in accordance with the Modernization Act, will help ensure the safety, identity, strength, quality, and purity of PET drugs by establishing CGMP requirements. The objective of the rule is to reduce the risk to public health from adverse events that would be more likely to occur in the absence of adherence to CGMP for PET drugs.

2. Definition of Small Entities

A regulatory flexibility analysis (RFA) is required to estimate the number of small entities to which the rule applies. Since we did not receive any comments on the proposed rule that addressed the analysis of impacts on small entities, we retain our analysis for the final rule, with revisions for inflation. This rule affects producers of PET drugs, including certain hospitals, clinics, colleges and universities, and producers of in vivo diagnostic substances. According to the Small Business Administration (SBA), pharmaceutical preparation manufacturers with 750 or fewer employees, electromedical and electrotherapeutic apparatus manufacturers with 500 or fewer employees, drugs and druggists' sundries wholesalers with 100 or fewer employees, and for-profit hospitals, clinics, colleges, and universities with $29 million or less in revenue are considered small businesses or entities. To estimate the number of U.S. establishments producing PET drugs, we combined a list of PET centers with cyclotrons from the Academy of Molecular Imaging (AMI) with a list of PET manufacturing facilities from the Society of Nuclear Imaging in Drug Development, which has since merged with the AMI, and added additional facilities that we identified. We have identified 101 establishments operated by 51 PET drug producers. In over one-third of the cases, the PET drug is produced by a hospital. In other instances, a corporate producer manages production under contract at one or more hospitals with cyclotrons. PET drugs are also produced at independent establishments by corporate producers or small regional producers. Total producer numbers continue to increase as the current corporate producers expand their number of establishments and more independent regional producers enter the market.

Using information from the American Hospital Association (AHA), we characterized 28 of the hospital producers as one of the following establishment types:

- Government, non-Federal;
- Government, Federal;
- Non-Government not-for-profit;
- Investor-owned (for-profit).[6]

The AHA data did not include information for eight hospitals associated with large colleges or universities, but for this analysis, these were assumed to be not-for-profit because approximately 93 percent of all 4-year higher education institutions are public or nonprofit institutions.[7] Census data reports indicate that private hospitals (with more than 100 employees) average gross revenues of about $36.8 million in 1997. This figure inflates to about $57.7 million using the Consumer Price Index (CPI) for medical care from 1997 to 2007. Considering that hospitals producing PET drugs probably are larger than the average private hospital, we consider it very likely that the two private hospitals producing PET drugs have annual revenues over $29 million and are therefore not considered small entities.[8] In instances where PET drug producer information is not available, this analysis assumes that the PET drug producer is owned by the hospital in which it is located.

Two of the three domestic corporate PET drug producers exceed the SBA employee limits within their respective business classifications to qualify as small businesses. Employee data were not available for the other domestic corporation or any of the 11 regional commercial producers, and we therefore assume that these may be small businesses.

In total, the 51 identified producers of PET drugs are classified as follows: 6 Federal, 6 State, 34 small entities, and 5 large entities. Most of those that were considered small entities were classified as such because they are not-for-profit organizations, not because they met the employee or revenue limits for small businesses. It should be noted that an entity's identification as small or large in this analysis does not necessarily indicate the volume of PET drugs it produces or the share of the market it holds.

3. Impact on Small Entities

The reporting, recordkeeping, and other compliance requirements on small entities are detailed in the regulatory cost section of this preamble. Most, if not all, of the PET drug producers currently employ individuals who possess skills necessary to establish written procedures and prepare documentation as required by this rule. Some may choose, as mentioned above, to contract with an outside consultant to manage their compliance with the rule.

At most, a single PET drug producer may incur one-time and annual costs of approximately $57,900 and $32,400, respectively, per production facility. The hospital and regional commercial producers will incur these higher per-facility costs because these establishments are expected to have higher noncompliance rates with the written procedure and recordkeeping requirements. The total of the maximum one-time and annual costs per producer equates to significantly less than 1 percent of the $111 million ($70.8 million inflated by the CPI for medical care from 1997 to 2007) average annual gross revenue per nonprofit hospital. In addition, most of the hospitals that are affected by this rule are affiliated with large universities whose total revenues are expected to be much higher than the $111 million figure cited. The estimated compliance cost represents an even

[6] ''AHA Guide to the Health Care Field, 1997–98 Edition,'' Healthcare Infosource, Inc., a subsidiary of the American Hospital Association.

[7] ''The Nation: Colleges and Universities,'' *The Chronicle of Higher Education, 1999–2000, Almanac Issue*, volume XVI, no. 1, p. 7, August 27, 1999.

[8] ''Hospital Statistics,'' table 3, pp. 8–9, Health Forum, An American Hospital Association Company, 1999.

smaller portion of a percent of the entire university's revenues. Revenue data were not available for the one possibly small corporate producer. This company is expected to incur annual costs of approximately $70,100 and one-time costs of about $16,800. The 11 regional commercial producers are expected to incur one-time and annual costs of approximately $57,900 per producer and $32,400 per production facility. We lack sufficient data to estimate the expected compliance costs as a percentage of revenues for the regional commercial producers. Although no comments on the proposed rule directly addressed our estimates of the expected impact of compliance costs on small facilities, it is possible that this final rule will have a significant effect on these small entities.

4. Other Federal Rules

We are not aware of any relevant Federal rules that may duplicate, overlap, or conflict with the rule.

5. Analysis of Alternatives

Several alternative provisions were considered in addition to those of the proposed rule. These included using traditional CGMPs, requiring specific identity testing of PET drug components, requiring verification of certificates of analyses of PET drug components, validating production and process controls, and requiring audit trail capabilities for all computer-operated systems. These alternative provisions were not included in the proposed rule because they were determined to be unnecessary, unduly burdensome, or both.

(Comment 43) We received one comment on electronic audit trail capabilities. The comment stated that, as we estimated, there is very little if any software of this nature in use by PET drug producers. The comment stated that many items of production equipment are incapable of the necessary software upgrades due to age and existing operating systems. The comment maintained that requiring the use of electronic audit trail software would be unduly burdensome for the PET community, and it recommended that we not require an electronic audit trail as part of PET CGMP provisions.

(Response) We agree that the additional level of quality assurance that might be provided through the use of electronic audit trail capability does not warrant the additional costs that would be imposed to implement this capability. Therefore, the CGMP requirements for PET drugs do not include electronic audit trail requirements.

We did not receive any public comments on the proposed rule concerning the analyses of the other alternative provisions of the proposed PET CGMP rule.

V. Environmental Impact

We have determined under 21 CFR 25.30(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Current Good Manufacturing Practice for Positron Emission Tomography Drugs

Description: In accordance with the Modernization Act, the final rule establishes CGMP requirements for PET drugs. The CGMP requirements are designed to take into account the unique characteristics of PET drugs, including their short half-lives and the fact that most PET drugs are produced at locations that are very close to the patients to whom the drugs are administered. The estimated annual recordkeeping and third-party disclosure burden is based on there being 51 PET drug producers operating 36 hospital or academic facilities and 65 commercial facilities for a total of 101 PET drug production facilities.

The CGMP regulations are intended to ensure that approved PET drugs meet the requirements of the act as to safety, identity, strength, quality, and purity. The regulations address the following matters: Personnel and resources; quality assurance; facilities and equipment; control of components, in-process materials, and finished products; production and process controls; laboratory controls; acceptance criteria; labeling and packaging controls; distribution controls; complaint handling; and recordkeeping.

The CGMP regulations establish several recordkeeping requirements for the production of PET drugs. In making our estimates of the time spent in complying with these requirements, we relied on communications we have had with PET producers, visits by our staff to PET facilities, and our familiarity with both PET and general pharmaceutical manufacturing practices.

Description of Respondents: Academic institutions, hospitals, commercial manufacturers, and other entities that produce PET drugs.

Burden Estimate: Table 4 of this document provides an estimate of the annual recordkeeping burdens associated with the final rule. Table 5 of this document provides an estimate of the annual third-party disclosure burdens associated with the final rule. All of our recordkeeping burden estimates are based on there being 101 PET production facilities, with each of the 36 academic or hospital facilities producing 3 different PET drug products and each of the 65 commercial facilities producing 1 PET drug, resulting in an estimated 173 total PET drugs. Our estimates are also based on a 250-day work year with an average yearly production of 500 batches for each facility. We have also taken into account that time spent on recording procedures, processes, and specifications may be somewhat higher in the year in which these records are first established and correspondingly lower in subsequent years, when only updates and revisions will be required.

A. Investigational and Research PET Drugs

Section 212.5(b)(2) provides that for investigational PET drugs produced under an IND and research PET drugs produced with approval of an RDRC, the requirement under the act to follow current good manufacturing practice is met by complying with the regulations in part 212 or with USP 32 Chapter 823. We believe that PET production facilities producing drugs under INDs and RDRCs are currently substantially complying with the recordkeeping requirements of USP 32 Chapter 823 (see section 121(b) of the Modernization Act), and accordingly, we have not estimated any recordkeeping burden for this provision of the rule.

B. Batch Production and Control Records

Sections 212.20(c) through (e), 212.50(a) through (c), and 212.80(c) set out requirements for batch and production records as well as written control records. We estimate that it would take 20 hours annually for each PET production facility to prepare and

maintain written production and control procedures and to create and maintain master batch records for each PET drug produced. We also estimate that there will be a total of 173 PET drugs produced, with a total estimated recordkeeping burden of 3,460 hours. We estimate that it would take a PET production facility an average of 30 minutes to complete a batch record for each of 500 batches. Our estimated burden for completing batch records is 25,250 hours.

C. Equipment and Facilities Records

Sections 212.20(c), 212.30(b), 212.50(d), and 212.60(f) contain requirements for records dealing with equipment and physical facilities. We estimate that it would take 1 hour to establish and maintain these records for each piece of equipment in each PET production facility. We estimate that the total burden for establishing procedures for these records would be 1,515 hours. We estimate that recording maintenance and cleaning information would take 5 minutes a day for each piece of equipment, with a total recordkeeping burden of 31,436 hours.

D. Records of Components, Containers, and Closures

Sections 212.20(c) and 212.40(a), (b), and (e) contain requirements on records regarding receiving and testing of components, containers, and closures. We estimate that the annual burden for establishing these records would be 202 hours. We estimate that each facility would receive 36 shipments annually and would spend 10 minutes per shipment entering records. The annual burden for maintaining these records would be 604 hours.

E. Process Verification

Section 212.50(f)(2) requires that any process verification activities and results be recorded. Because process verification is only required when results of the production of an entire batch are not fully verified through finished-product testing, we believe that process verification will be a very rare occurrence, and we have not estimated any recordkeeping burden for documenting process verification.

F. Laboratory Testing Records

Sections 212.20(c), 212.60(a), (b), and (g), 212.61(a) through (b), and 212.70(a), (b), and (d) set out requirements for documenting laboratory testing and specifications referred to in laboratory testing, including final release testing and stability testing. We estimate that each commercial PET production facility will need to establish procedures and create forms for 20 different tests for the 1 product they produce. Each hospital and academic PET drug production facility will need to establish procedures and create forms for a total of 34 different tests for the 3 products they produce. We estimate that it will take each facility an average of 1 hour to establish procedures and create forms for one test. The estimated annual burden for establishing procedures and creating forms for these records is 2,525 hours, and the annual burden for recording laboratory test results is 8,383 hours.

G. Sterility Test Failure Notices

Section 212.70(e) requires PET drug producers to notify all receiving facilities if a batch fails sterility tests. We believe that sterility test failures might occur in only 0.05 percent of the estimated 50,500 batches of PET drugs produced each year (about 25 times each year). Therefore, we have estimated that each PET drug producer will need to provide 0.25 sterility test failure notice per year to receiving facilities. The notice would be provided using e-mail or facsimile transmission and should take no more than 1 hour.

H. Conditional Final Releases

Section 212.70(f) requires PET drug producers to document any conditional final releases of a product. We believe that conditional final releases will be fairly uncommon, but for purposes of the PRA, we estimated that each PET production facility would have one conditional final release a year and would spend 1 hour documenting the release and notifying receiving facilities.

(Comment 44) One comment expressed concern about the estimate of the frequency of conditional final release of PET drug products. The comment noted that the preamble to the proposed rule stated that conditional final release should not be necessary except in ''very rare circumstances''; the comment also noted the statement in the preamble that repeated conditional final releases based on the unavailability of equipment that is difficult to envision failing or that is easily replaced could be considered to be a failure to take ''reasonable efforts * * * to ensure that the problem does not recur'' within the meaning of proposed § 212.70(f)(1)(v). The comment disagreed with the estimate of one conditional final release per year for each facility, stating that there appeared to be no consideration for size or production volume. The comment maintained that the use of conditional release should be tracked by producers to look for trends in equipment failures that need corrective actions, and the diligence applied in these corrective actions should be the measure for taking reasonable efforts to ensure that the problem does not recur.

(Response) We believe that the estimate of one conditional final release per year per facility is an appropriate average number because we believe that many facilities might have no conditional final releases while others might have only a few. We agree with the comment that an assessment of ''reasonable efforts'' to prevent recurrence of a malfunction involving analytical equipment, under § 212.70(f)(1)(iv) of the final rule, would not focus primarily on the specific number of equipment failures. Instead, the reasonableness of the efforts relates to the steps that a producer takes to remedy a particular equipment problem and to identify and address trends in equipment malfunctions.

I. Out-of-Specification Investigations

Sections 212.20(c) and 212.71(a) and (b) require PET drug producers to establish procedures for investigating products that do not conform to specifications and conduct these investigations as needed. We estimate that it will take 1 hour annually to record and update these procedures for each PET production facility. We also estimate, for purposes of the PRA, that one out-of-specification investigation would be conducted at each facility each year and that it would take 1 hour to document the investigation.

(Comment 45) One comment maintained that the number of out-of-specification investigations is significantly underestimated (at one investigation per facility each year). The comment stated that a true failure might only occur once each year but an out-of-specification investigation is necessary each time a single item in the final product testing process results in a nonconformance to specifications. The comment stated that because quality control on each batch is executed quickly, most out-of-specification conditions are directly due to operator or equipment failure and are rectified by retesting. The comment maintained that out-of-specification investigations actually occur two to three times per month; therefore, the comment recommended that we use an estimate of 36 investigations per facility each year.

(Response) We agree with the comment's reasoning and we have revised the annual frequency of out-of-specification investigations from 1 to 36, which results in an annual hourly burden of 3,636 (101 producers times 36

investigations times 1 hour for documentation equals 3,636 hours).

J. Reprocessing Procedures

Sections 212.20(c) and 212.71(d) require PET drug producers to establish and document procedures for reprocessing PET drugs. We estimate that it will take 1 hour a year to document these procedures for each PET production facility. We did not estimate a separate burden for recording the actual reprocessing, both because we believe it would be an uncommon event and because the recordkeeping burden has been included in our estimate for batch production and control records.

K. Distribution Records

Sections 212.20(c) and 212.90(a) require that written procedures regarding distribution of PET drug products be established and maintained. We estimate that it will take 1 hour annually to establish and maintain records of these procedures for each PET production facility. Section 212.90(b) requires that distribution records be maintained. We estimate that it will take 15 minutes to create an actual distribution record for each batch of PET drug products, with a total burden of 12,625 hours for all PET producers.

L. Complaints

Sections 212.20(c) and 212.100 require that PET drug producers establish written procedures for dealing with complaints, as well as document how each complaint is handled. We estimate that establishing and maintaining written procedures for complaints will take 1 hour annually for each PET production facility and that each facility will receive one complaint a year and will spend 30 minutes recording how the complaint was dealt with.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
212.20(c) and (e), 212.50(a) and (b)	101	1.71	173	20	3,460
212.20(d) and (e), 212.50(c), 212.80(c)	101	500	50,500	.5	25,250
212.20(c), 212.30(b), 212.50(d), 212.60(f)	101	15	1,515	1	1,515
212.30(b), 212.50(d), 212.60(f)	101	3,750	378,750	.083	31,436
212.20(c), 212.40(a) and (b)	101	2	202	1	202
212.40(e)	101	36	3,636	.166	604
212.20(c), 212.60(a) and (b), 212.61(a), 212.70(a), (b), and (d)	101	25	2,525	1	2,525
212.60(g), 212.61(b), 212.70(d)(2) and (d)(3)	101	500	50,500	.166	8,383
212.70(f)	101	1	101	1	101
212.20(c), 212.71(a)	101	36	3,636	1	3,636
212.71(b)	101	1	101	1	101
212.20(c), 212.71(d)	101	1	101	1	101
212.20(c), 212.90(a)	101	1	101	1	101
212.90(b)	101	500	50,500	.25	12,625
212.20(c), 212.100(a)	101	1	101	1	101
212.100(b) and (c)	101	1	101	.5	50
Total					90,191

TABLE 5.—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Responses	Hours per Response	Total Hours
212.70(e)	101	.25	25	1	25
Total					25

The information collection provisions of this final rule have been submitted to the Office of Management and Budget (OMB) for review, as required under section 3507(d) of the PRA. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VII. Federalism

We have analyzed this rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VIII. Effective Date

Under section 501(a)(2)(C) of the act, a compounded PET drug is adulterated unless it is produced in compliance with the USP's PET drug compounding standards and the official monograph for the particular PET drug. As stated in the proposed rule, section 121(b)(1) of the Modernization Act added this provision as a safety net while we developed the CGMP regulations for PET drugs. Section 121(b)(2) of the Modernization Act specifies that section 501(a)(2)(C) of the act will expire 2 years after the date on which we establish appropriate approval procedures and CGMP requirements for PET drugs in accordance with section 121(c)(1)(A) of the Modernization Act. For this reason, this final rule on CGMP for PET drugs will become effective 2 years after the date on which the rule is published in the **Federal Register**. (See the **DATES** section of this document.) Beginning on that date, PET drug producers will be required to produce PET drugs in accordance with the CGMP requirements set forth in part 212.

We also note that section 121(c)(2)(A) of the Modernization Act provides that we cannot require the submission of an NDA or ANDA for a PET drug until 2 years after the date on which we establish appropriate approval procedures and CGMP requirements for PET drugs. With the publication of this final rule, we have established CGMP requirements for PET drugs in accordance with section 121(c)(1)(A)(ii) of the Modernization Act. As discussed in section III.A of this document, we have established approval procedures for PET drugs in accordance with section 121(c)(1)(A)(i) of the Modernization Act. Therefore, in accordance with section 121(c)(2)(A) of the Modernization Act, the requirements in the act and FDA regulations concerning NDAs and ANDAs will become applicable to PET drugs 2 years from the date of publication of this final rule. (See the **DATES** section of this document.) After that date, PET drug producers will be required to submit either an NDA or ANDA for each of their PET drugs.

List of Subjects

21 CFR Part 210

Drugs, Packaging and containers.

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 212

Current good manufacturing practice, Drugs, Incorporation by reference, Labeling, Laboratories, Packaging and containers, Positron emission tomography drugs, Prescription drugs, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, the Food and Drug Modernization Act of 1997, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

PART 210—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS; GENERAL

■ 1. The authority citation for 21 CFR part 210 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 360b, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

§ 210.1 [Amended]

■ 2. Amend § 210.1 by removing the phrase ''211 through 226'' each time it appears and by adding in its place the phrase ''211, 225, and 226''.

§ 210.2 [Amended]

■ 3. Amend § 210.2(a) and (b) by removing the phrase ''211 through 226'' both times it appears and by adding in its place the phrase ''211, 225, and 226''.

§ 210.3 [Amended]

■ 4. Amend § 210.3 in paragraphs (a) and (b) introductory text by removing the phrase ''211 through 226'' and adding in its place the phrase ''211, 225, and 226''.

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

■ 5. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 360b, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

■ 6. Amend § 211.1 by revising paragraph (a) to read as follows:

§ 211.1 Scope.

(a) The regulations in this part contain the minimum current good manufacturing practice for preparation of drug products (excluding positron emission tomography drugs) for administration to humans or animals.

* * * * *

■ 7. Add part 212 to read as follows:

PART 212—CURRENT GOOD MANUFACTURING PRACTICE FOR POSITRON EMISSION TOMOGRAPHY DRUGS

Subpart A—General Provisions

Sec.

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Authority: 21 U.S.C. 321, 351, 352, 355, 371, 374; Sec. 121, Pub. L. 105–115, 111 Stat. 2296.

Subpart A—General Provisions

§ 212.1 What are the meanings of the technical terms used in these regulations?

The following definitions apply to words and phrases as they are used in this part. Other definitions of these words may apply when they are used in other parts of this chapter.

Acceptance criteria means numerical limits, ranges, or other criteria for tests that are used for or in making a decision to accept or reject a unit, lot, or batch of a PET drug product.

Act means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 321 *et seq.*).

Active pharmaceutical ingredient means a substance that is intended for incorporation into a finished PET drug product and is intended to furnish pharmacological activity or other direct effect in the diagnosis or monitoring of a disease or a manifestation of a disease in humans, but does not include intermediates used in the synthesis of such substance.

Batch means a specific quantity of PET drug intended to have uniform character and quality, within specified limits, that is produced according to a single production order during the same cycle of production.

Batch production and control record means a unique record that references an accepted master production and control record and documents specific details on production, labeling, and quality control for a single batch of a PET drug.

Component means any ingredient intended for use in the production of a PET drug, including any ingredients that may not appear in the final PET drug product.

Conditional final release means a final release made prior to completion of a required finished-product test because of a malfunction involving analytical equipment.

Final release means the authoritative decision by a responsible person in a PET production facility to permit the use of a batch of a PET drug in humans.

Inactive ingredient means any intended component of the PET drug other than the active pharmaceutical ingredient.

In-process material means any material fabricated, compounded, blended, or derived by chemical reaction that is produced for, and is used in, the preparation of a PET drug.

Lot means a batch, or a specifically identified portion of a batch, having uniform character and quality within specified limits. In the case of a PET drug produced by continuous process, a lot is a specifically identified amount produced in a unit of time or quantity in a manner that ensures its having uniform character and quality within specified limits.

Lot number, *control number*, or *batch number* means any distinctive combination of letters, numbers, or symbols from which the complete history of the production, processing, packing, holding, and distribution of a batch or lot of a PET drug can be determined.

Master production and control record means a compilation of instructions containing the procedures and specifications for the production of a PET drug.

Material release means the authoritative decision by a responsible person in a PET production facility to permit the use of a component, container and closure, in-process material, packaging material, or labeling in the production of a PET drug.

PET means positron emission tomography.

PET drug means a radioactive drug that exhibits spontaneous disintegration of unstable nuclei by the emission of positrons and is used for providing dual photon positron emission tomographic diagnostic images. The definition includes any nonradioactive reagent, reagent kit, ingredient, nuclide generator, accelerator, target material, electronic synthesizer, or other apparatus or computer program to be used in the preparation of a PET drug. ''PET drug'' includes a ''PET drug product'' as defined in this section.

PET drug product means a finished dosage form of a PET drug, whether or not in association with one or more other ingredients.

PET drug production facility means a facility that is engaged in the production of a PET drug.

Production means the manufacturing, compounding, processing, packaging, labeling, reprocessing, repacking, relabeling, and testing of a PET drug.

Quality assurance means a system for ensuring the quality of active ingredients, PET drugs, intermediates, components that yield an active pharmaceutical ingredient, analytical supplies, and other components, including container-closure systems and in-process materials, through procedures, tests, analytical methods, and acceptance criteria.

Receiving facility means any hospital, institution, nuclear pharmacy, imaging facility, or other entity or part of an entity that accepts a PET drug product that has been given final release, but does not include a common or contract carrier that transports a PET drug product from a PET production facility to a receiving facility.

Specifications means the tests, analytical procedures, and appropriate acceptance criteria to which a PET drug, PET drug product, component, container-closure system, in-process material, or other material used in PET drug production must conform to be considered acceptable for its intended use. Conformance to specifications means that a PET drug, PET drug product, component, container-closure system, in-process material, or other material used in PET drug production, when tested according to the described analytical procedures, meets the listed acceptance criteria.

Strength means the concentration of the active pharmaceutical ingredient (radioactivity amount per volume or weight at the time of calibration).

Sub-batch means a quantity of PET drug having uniform character and quality, within specified limits, that is produced during one succession of multiple irradiations, using a given synthesis and/or purification operation.

Verification means confirmation that an established method, process, or system meets predetermined acceptance criteria.

§ 212.2 What is current good manufacturing practice for PET drugs?

Current good manufacturing practice for PET drugs is the minimum requirements for the methods to be used

in, and the facilities and controls used for, the production, quality assurance, holding, or distribution of PET drugs intended for human use. Current good manufacturing practice is intended to ensure that each PET drug meets the requirements of the act as to safety and has the identity and strength, and meets the quality and purity characteristics, that it is supposed to have.

§ 212.5 To what drugs do the regulations in this part apply?

(a) *Application solely to PET drugs.* The regulations in this part apply only to the production, quality assurance, holding, and distribution of PET drugs. Any human drug that does not meet the definition of a PET drug must be manufactured in accordance with the current good manufacturing practice requirements in parts 210 and 211 of this chapter.

(b) *Investigational and research PET drugs.* For investigational PET drugs for human use produced under an investigational new drug application in accordance with part 312 of this chapter, and PET drugs produced with the approval of a Radioactive Drug Research Committee in accordance with part 361 of this chapter, the requirement under the act to follow current good manufacturing practice is met by complying with the regulations in this part or by producing PET drugs in accordance with Chapter 823, ''Radiopharmaceuticals for Positron Emission Tomography—Compounding,'' May 1, 2009, pp. 365–369, 32d ed. of the United States Pharmacopeia (USP) National Formulary (NF) (USP 32/NF 27) (2009). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the United States Pharmacopeial Convention, Inc., 12601 Twinbrook Pkwy., Rockville, MD 20852, Geeta M. Tirumalai, 301–816–8352, e-mail: *gt@usp.org,* Internet address: *http://www.usp.org/USPNF/notices.* You may inspect a copy at the Food and Drug Administration Biosciences Library, 10903 New Hampshire Ave., Silver Spring, MD, 20993–0002, 301–796–3504, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Subpart B—Personnel and Resources

§ 212.10 What personnel and resources must I have?

You must have a sufficient number of personnel with the necessary education, background, training, and experience to perform their assigned functions. You must have adequate resources, including facilities and equipment, to enable your personnel to perform their functions.

Subpart C—Quality Assurance

§ 212.20 What activities must I perform to ensure drug quality?

(a) *Production operations.* You must oversee production operations to ensure that each PET drug meets the requirements of the act as to safety and has the identity and strength, and meets the quality and purity characteristics, that it is supposed to have.

(b) *Materials.* You must examine and approve or reject components, containers, closures, in-process materials, packaging materials, labeling, and finished dosage forms to ensure compliance with procedures and specifications affecting the identity, strength, quality, or purity of a PET drug.

(c) *Specifications and processes.* You must approve or reject, before implementation, any initial specifications, methods, processes, or procedures, and any proposed changes to existing specifications, methods, processes, or procedures, to ensure that they maintain the identity, strength, quality, and purity of a PET drug. You must demonstrate that any change does not adversely affect the identity, strength, quality, or purity of any PET drug.

(d) *Production records.* You must review production records to determine whether errors have occurred. If errors have occurred, or a production batch or any component of the batch fails to meet any of its specifications, you must determine the need for an investigation, conduct investigations when necessary, and take appropriate corrective actions.

(e) *Quality assurance.* You must establish and follow written quality assurance procedures.

Subpart D—Facilities and Equipment

§ 212.30 What requirements must my facilities and equipment meet?

(a) *Facilities.* You must provide adequate facilities to ensure the orderly handling of materials and equipment, the prevention of mix-ups, and the prevention of contamination of equipment or product by substances, personnel, or environmental conditions that could reasonably be expected to have an adverse effect on product quality.

(b) *Equipment procedures.* You must implement procedures to ensure that all equipment that could reasonably be expected to adversely affect the identity, strength, quality, or purity of a PET drug, or give erroneous or invalid test results when improperly used or maintained, is clean, suitable for its intended purposes, properly installed, maintained, and capable of repeatedly producing valid results. You must document your activities in accordance with these procedures.

(c) *Equipment construction and maintenance.* Equipment must be constructed and maintained so that surfaces that contact components, in-process materials, or PET drugs are not reactive, additive, or absorptive so as to alter the quality of PET drugs.

Subpart E—Control of Components, Containers, and Closures

§ 212.40 How must I control the components I use to produce PET drugs and the containers and closures I package them in?

(a) *Written procedures.* You must establish, maintain, and follow written procedures describing the receipt, login, identification, storage, handling, testing, and acceptance and/or rejection of components and drug product containers and closures. The procedures must be adequate to ensure that the components, containers, and closures are suitable for their intended use.

(b) *Written specifications.* You must establish appropriate written specifications for the identity, quality, and purity of components and for the identity and quality of drug product containers and closures.

(c) *Examination and testing.* Upon receipt, each lot of components and containers and closures must be uniquely identified and tested or examined to determine whether the lot complies with your specifications. You must not use in PET drug production any lot that does not meet its specifications, including any expiration date if applicable, or that has not yet received its material release. Any incoming lot must be appropriately designated as quarantined, accepted, or rejected. You must use a reliable supplier as a source of each lot of each component, container, and closure.

(1)(i) If you conduct finished-product testing of a PET drug product that includes testing to ensure that the correct components have been used, you must determine that each lot of incoming components used in that PET

drug product complies with written specifications by examining a certificate of analysis provided by the supplier. You are not required to perform a specific identity test on any of those components.

(ii) If you do not conduct finished-product testing of a PET drug product that ensures that the correct components have been used, you must conduct identity testing on each lot of a component that yields an active ingredient and each lot of an inactive ingredient used in that PET drug product. This testing must be conducted using tests that are specific to each component that yields an active ingredient and each inactive ingredient. For any other component, such as a solvent or reagent, that is not the subject of finished-product testing, you must determine that each lot complies with written specifications by examining a certificate of analysis provided by the supplier; if you use such a component to prepare an inactive ingredient on site, you must perform an identity test on the components used to make the inactive ingredient before the components are released for use. However, if you use as an inactive ingredient a product that is approved under section 505 of the act (21 U.S.C. 355) and is marketed as a finished drug product intended for intravenous administration, you need not perform a specific identity test on that ingredient.

(2) You must examine a representative sample of each lot of containers and closures for conformity to its written specifications. You must perform at least a visual identification of each lot of containers and closures.

(d) *Handling and storage.* You must handle and store components, containers, and closures in a manner that prevents contamination, mix-ups, and deterioration and ensures that they are and remain suitable for their intended use.

(e) *Records.* You must keep a record for each shipment of each lot of components, containers, and closures that you receive. The record must include the identity and quantity of each shipment, the supplier's name and lot number, the date of receipt, the results of any testing performed, the disposition of rejected material, and the expiration date (where applicable).

Subpart F—Production and Process Controls

§ 212.50 What production and process controls must I have?

You must have adequate production and process controls to ensure the consistent production of a PET drug that meets the applicable standards of identity, strength, quality, and purity.

(a) *Written control procedures.* You must have written production and process control procedures to ensure and document that all key process parameters are controlled and that any deviations from the procedures are justified.

(b) *Master production and control records.* You must have master production and control records that document all steps in the PET drug production process. The master production and control records must include the following information:

(1) The name and strength of the PET drug;

(2) If applicable, the name and radioactivity or other measurement of each active pharmaceutical ingredient and each inactive ingredient per batch or per unit of radioactivity or other measurement of the drug product, and a statement of the total radioactivity or other measurement of any dosage unit;

(3) A complete list of components designated by names and codes sufficiently specific to indicate any special quality characteristic;

(4) Identification of all major pieces of equipment used in production;

(5) An accurate statement of the weight or measurement of each component, using the same weight system (metric, avoirdupois, or apothecary) for each component. Reasonable variations are permitted in the amount of component necessary if they are specified in the master production and control records;

(6) A statement of action limits on radiochemical yield, i.e., the minimum percentage of yield beyond which investigation and corrective action are required;

(7) Complete production and control instructions, sampling and testing procedures, specifications, special notations, and precautions to be followed; and

(8) A description of the PET drug product containers, closures, and packaging materials, including a specimen or copy of each label and all other labeling.

(c) *Batch production and control records.* Each time a batch of a PET drug is produced, a unique batch production and control record must be created. The batch production record must include the following information:

(1) Name and strength of the PET drug;

(2) Identification number or other unique identifier of the specific batch that was produced;

(3) The name and radioactivity or other measure of each active pharmaceutical ingredient and each inactive ingredient per batch or per unit of radioactivity or other measurement of the drug product;

(4) Each major production step (obtained from the approved appropriate master production and control record);

(5) Weights (or other measure of quantity) and identification codes of components;

(6) Dates of production steps and times of critical production steps;

(7) Identification of major pieces of equipment used in production of the batch;

(8) Testing results;

(9) Labeling;

(10) Initials or signatures of persons performing or checking each significant step in the operation; and

(11) Results of any investigations conducted.

(d) *Area and equipment checks.* The production area and all equipment in the production area must be checked to ensure cleanliness and suitability immediately before use. A record of these checks must be kept.

(e) *In-process materials controls.* Process controls must include control of in-process materials to ensure that the materials are controlled until required tests or other verification activities have been completed or necessary approvals are received and documented.

(f) *Process verification.* (1) For a PET drug for which each entire batch undergoes full finished-product testing to ensure that the product meets all specifications, process verification, as described in paragraph (f)(2) of this section, is not required.

(2) When the results of the production of an entire batch of a PET drug are not fully verified through finished-product testing or when only the initial sub-batch in a series is tested, the PET drug producer must demonstrate that the process for producing the PET drug is reproducible and is capable of producing a drug product that meets the predetermined acceptance criteria. Process verification activities and results must be documented. Documentation must include the date and signature of the individual(s) performing the verification, the monitoring and control methods and data, and the major equipment qualified.

Subpart G—Laboratory Controls

§ 212.60 What requirements apply to the laboratories where I test components, in-process materials, and finished PET drug products?

(a) *Testing procedures.* Each laboratory used to conduct testing of

components, in-process materials, and finished PET drug products must have and follow written procedures for the conduct of each test and for the documentation of the results.

(b) *Specifications and standards.* Each laboratory must have sampling and testing procedures designed to ensure that components, in-process materials, and PET drug products conform to appropriate standards, including established standards of identity, strength, quality, and purity.

(c) *Analytical methods.* Laboratory analytical methods must be suitable for their intended use and must be sufficiently sensitive, specific, accurate, and reproducible.

(d) *Materials.* The identity, purity, and quality of reagents, solutions, and supplies used in testing procedures must be adequately controlled. All solutions that you prepare must be properly labeled to show their identity and expiration date.

(e) *Equipment.* All equipment used to perform the testing must be suitable for its intended purposes and capable of producing valid results.

(f) *Equipment maintenance.* Each laboratory must have and follow written procedures to ensure that equipment is routinely calibrated, inspected, checked, and maintained, and that these activities are documented.

(g) *Test records.* Each laboratory performing tests related to the production of a PET drug must keep complete records of all tests performed to ensure compliance with established specifications and standards, including examinations and assays, as follows:

(1) A suitable identification of the sample received for testing.

(2) A description of each method used in the testing of the sample, a record of all calculations performed in connection with each test, and a statement of the weight or measurement of the sample used for each test.

(3) A complete record of all data obtained in the course of each test, including the date and time the test was conducted, and all graphs, charts, and spectra from laboratory instrumentation, properly identified to show the specific component, in-process material, or drug product for each lot tested.

(4) A statement of the results of tests and how the results compare with established acceptance criteria.

(5) The initials or signature of the person performing the test and the date on which the test was performed.

§ 212.61 What must I do to ensure the stability of my PET drug products through expiry?

(a) *Stability testing program.* You must establish, follow, and maintain a written testing program to assess the stability characteristics of your PET drug products. The test methods must be reliable, meaningful, and specific. The samples tested for stability must be representative of the lot or batch from which they were obtained and must be stored under suitable conditions.

(b) *Storage conditions and expiration dates.* The results of such stability testing must be documented and used in determining appropriate storage conditions and expiration dates and times for each PET drug product you produce.

Subpart H—Finished Drug Product Controls and Acceptance

§ 212.70 What controls and acceptance criteria must I have for my finished PET drug products?

(a) *Specifications.* You must establish specifications for each PET drug product, including criteria for determining identity, strength, quality, purity, and, if appropriate, sterility and pyrogens.

(b) *Test procedures.* Before you implement a new test procedure in a specification, you must establish and document the accuracy, sensitivity, specificity, and reproducibility of the procedure. If you use an established compendial test procedure in a specification, you must first verify and document that the test works under the conditions of actual use.

(c) *Conformance to specifications.* Before final release, you must conduct an appropriate laboratory determination to ensure that each batch of a PET drug product conforms to specifications, except for sterility. For a PET drug product produced in sub-batches, before final release, you must conduct an appropriate laboratory determination to ensure that each sub-batch conforms to specifications, except for sterility.

(d) *Final release procedures.* Except as conditional final release is permitted in accordance with paragraph (f) of this section, you must establish and follow procedures to ensure that each batch of a PET drug product is not given final release until the following are done:

(1) An appropriate laboratory determination under paragraph (c) of this section is completed;

(2) Associated laboratory data and documentation are reviewed and they demonstrate that the PET drug product meets specifications, except for sterility; and

(3) A designated qualified individual authorizes final release by dated signature.

(e) *Sterility testing.* Sterility testing need not be completed before final release but must be started within 30 hours after completion of production. The 30-hour requirement may be exceeded due to a weekend or holiday. If the sample for sterility testing is held longer than 30 hours, you must demonstrate that the longer period does not adversely affect the sample and the test results obtained will be equivalent to test results that would have been obtained if the test had been started within the 30-hour time period. Tested samples must be from individual batches and not pooled. If the product fails to meet a criterion for sterility, you must immediately notify all facilities that received the product of the test results and provide any appropriate recommendations. The notification must be documented. Upon completion of an investigation into the failure to meet a criterion for sterility, you must notify all facilities that received the product of the findings from the investigation.

(f) *Conditional final release.* (1) If you cannot complete one of the required finished-product tests for a batch of a PET drug product because of a malfunction involving analytical equipment, you may approve the conditional final release of the product if you meet the following conditions:

(i) You have data documenting that preceding consecutive batches, produced using the same methods used for the conditionally released batch, demonstrate that the conditionally released batch will likely meet the established specifications;

(ii) You determine that all other acceptance criteria are met;

(iii) You retain a reserve sample of the conditionally released batch of drug product;

(iv) You promptly correct the malfunction of analytical equipment, complete the omitted test using the reserve sample after the malfunction is corrected, and document that reasonable efforts have been made to prevent recurrence of the malfunction;

(v) If you obtain an out-of-specification result when testing the reserve sample, you immediately notify the receiving facility; and

(vi) You document all actions regarding the conditional final release of the drug product, including the justification for the release, all followup actions, results of completed testing, all notifications, and corrective actions to prevent recurrence of the malfunction involving analytical equipment.

(2) Even if the criteria in paragraph (f)(1) of this section are met, you may not approve the conditional final release of the product if the malfunction involving analytical equipment prevents

the performance of a radiochemical identity/purity test or prevents the determination of the product's specific activity.

(3) You may not release another batch of the PET drug product until you have corrected the problem concerning the malfunction of analytical equipment and completed the omitted finished-product test.

§ 212.71 What actions must I take if a batch of PET drug product does not conform to specifications?

(a) *Rejection of nonconforming product.* You must reject a batch of a PET drug product that does not conform to specifications. You must have and follow procedures to identify and segregate the product to avoid mix-ups. You must have and follow procedures to investigate the cause(s) of the nonconforming product. The investigation must include, but is not limited to, examination of processes, operations, records, complaints, and any other relevant sources of information concerning the nonconforming product.

(b) *Investigation.* You must document the investigation of a PET drug product that does not meet specifications, including the results of the investigation and what happened to the rejected PET drug product.

(c) *Correction of problems.* You must take action to correct any identified problems to prevent recurrence of a nonconforming product or other quality problem.

(d) *Reprocessing.* If appropriate, you may reprocess a batch of a PET drug product that does not conform to specifications. If material that does not meet acceptance criteria is reprocessed, you must follow procedures stated in the product's approved application and the finished product must conform to specifications, except for sterility, before final release.

Subpart I—Packaging and Labeling

§ 212.80 What are the requirements associated with labeling and packaging PET drug products?

(a) A PET drug product must be suitably labeled and packaged to protect the product from alteration, contamination, and damage during the established conditions of shipping, distribution, handling, and use.

(b) Labels must be legible and applied so as to remain legible and affixed during the established conditions of processing, storage, handling, distribution, and use.

(c) All information stated on each label must also be contained in each batch production record.

(d) Labeling and packaging operations must be controlled to prevent labeling and product mix-ups.

Subpart J—Distribution

§ 212.90 What actions must I take to control the distribution of PET drug products?

(a) *Written distribution procedures.* You must establish, maintain, and follow written procedures for the control of distribution of PET drug products shipped from the PET drug production facility to ensure that the method of shipping chosen will not adversely affect the identity, purity, or quality of the PET drug product.

(b) *Distribution records.* You must maintain distribution records for each PET drug product that include or refer to the following:

(1) The name, address, and telephone number of the receiving facility that received each batch of a PET drug product;

(2) The name and quantity of the PET drug product shipped;

(3) The lot number, control number, or batch number for the PET drug product shipped; and

(4) The date and time you shipped the PET drug product.

Subpart K—Complaint Handling

§ 212.100 What do I do if I receive a complaint about a PET drug product produced at my facility?

(a) *Written complaint procedures.* You must develop and follow written procedures for the receipt and handling of all complaints concerning the quality or purity of, or possible adverse reactions to, a PET drug product.

(b) *Complaint review.* The procedures must include review by a designated person of any complaint involving the possible failure of a PET drug product to meet any of its specifications and an investigation to determine the cause of the failure.

(c) *Complaint records.* A written record of each complaint must be maintained in a file designated for PET drug product complaints. The record must include the name and strength of the PET drug product, the batch number, the name of the complainant, the date the complaint was received, the nature of the complaint, and the response to the complaint. It must also include the findings of any investigation and followup.

(d) *Returned products.* A PET drug product that is returned because of a complaint or for any other reason may not be reprocessed and must be destroyed in accordance with applicable Federal and State law.

Subpart L—Records

§ 212.110 How must I maintain records of my production of PET drugs?

(a) *Record availability.* Records must be maintained at the PET drug production facility or another location that is reasonably accessible to responsible officials of the production facility and to employees of FDA designated to perform inspections.

(b) *Record quality.* All records, including those not stored at the inspected establishment, must be legible, stored to prevent deterioration or loss, and readily available for review and copying by FDA employees.

(c) *Record retention period.* You must maintain all records and documentation referenced in this part for a period of at least 1 year from the date of final release, including conditional final release, of a PET drug product.

Dated: December 3, 2009.

David Horowitz,

Assistant Commissioner for Policy.

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DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2009–HA–0151; 0720–AB37]

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/ TRICARE: Inclusion of Retail Network Pharmacies as Authorized TRICARE Providers for the Administration of TRICARE Covered Vaccines

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Interim final rule.

SUMMARY: This interim final rule allows a TRICARE retail network pharmacy to be an authorized provider for the administration of three TRICARE-covered vaccines in the retail pharmacy setting. The three immunizations are H1N1 vaccine, seasonal influenza vaccine, and pneumococcal vaccine. In addition, this interim final rule solicits public comment on also including other TRICARE-covered immunizations in the future for which retail network pharmacies will be authorized providers. As part of DoD preparations for a possible public health emergency involving H1N1 influenza this fall and winter, this is being issued as an interim final rule.

DATES: This interim final rule is effective December 10, 2009. Written

comments received at the address indicated below by February 8, 2010 will be considered and addressed in the final rule.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: LtCol Thomas Bacon, TRICARE Management Activity, telephone (703) 681–2890.

SUPPLEMENTARY INFORMATION:

A. Background

In the last 5 years, registered pharmacists have played an increasing role in providing clinical services through the retail pharmacy venue. In 50 States, registered pharmacists are authorized to administer vaccines in a retail pharmacy setting. State Boards of Pharmacy are responsible for the training, oversight, and stipulating the conditions under which a pharmacist may administer a vaccine.

The DoD regulation implementing the TRICARE Pharmacy Benefit Program was written prior to this recent development. Therefore, although vaccines are covered under the TRICARE medical benefit, if administered by a pharmacist in a pharmacy the service is not currently covered by TRICARE. Inclusion of vaccines under the pharmacy benefit when provided by a TRICARE retail network pharmacy in accordance with state law, including when administered by a registered pharmacist, is the purpose of this regulation.

TRICARE recognizes that registered pharmacists are increasingly providing vaccine administration services in retail pharmacies. Although vaccines are a covered TRICARE medical benefit, when administered by a pharmacist claims cannot be adjudicated because vaccines are not covered under the pharmacy benefit and pharmacies are not recognized by regulation as authorized providers for the administration of vaccines. Currently, TRICARE beneficiaries who receive a vaccine administered by a pharmacist cannot be reimbursed for any out-of-pocket expenses. TRICARE would like to include vaccines under the pharmacy benefit when provided by a TRICARE retail network pharmacy when functioning within the scope of their state laws, including when administered by a registered pharmacist, to enable claims processing and reimbursement for services.

Adding immunizations to the pharmacy benefits program is an important public health initiative for TRICARE, making immunizations more readily available to beneficiaries. It is especially important as part of the Nation's public health preparations for a potential pandemic influenza, such as is threatened this fall and winter by a novel H1N1 virus strain. In view of potential shortages of H1N1 flu vaccine, military treatment facilities may not have sufficient vaccine for all high risk categories of beneficiaries, necessitating reliance on non-DoD sources of vaccine. Ensuring that TRICARE beneficiaries have ready access to vaccine supplies allocated to private sector pharmacies will facilitate making vaccine appropriately available to high risk groups of TRICARE beneficiaries.

B. Provisions of Rule

The rule amends sections 199.6 and 199.21 of the TRICARE regulation to authorize retail network pharmacies when functioning under the scope of their state laws to provide vaccines and immunizations to eligible beneficiaries as covered TRICARE pharmacy benefits. Under this interim final rule, this authorization applies immediately to three immunizations. The three immunizations are H1N1 vaccine, seasonal influenza vaccine, and pneumococcal vaccine. In addition, this interim final rule solicits public comment on the option of expanding this authorization in a final rule to also include all other TRICARE-covered immunizations.

C. Regulatory Procedures

Interim Final Rule

This is being issued as an interim final rule as part of DoD preparations for a potential public health emergency this fall and winter involving the H1N1 influenza virus. The normal practice of soliciting public comment before making a change to the regulation would in this case be contrary to the public interest because there is insufficient time to do so in anticipation for a potential public health emergency this fall and winter associated with a possible reemergence of a more virulent strain of H1N1 influenza virus. Thus, this rule will be effective from the date of publication. However, public comments are still invited and all such comments will be considered in the issuance of a final rule, expected later this year or early next.

Executive Order 12866, ''Regulatory Planning and Review''

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The DoD has examined the economic and policy implications of this interim final rule and has concluded that it is not a significant regulatory action.

Congressional Review Act, 5 U.S.C. 801, et seq.

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100 million or more or have certain other impacts. This rule is not a major rule under the Congressional Review Act.

Sec. 202, Public Law. 104–4, ''Unfunded Mandates Reform Act''

This rule does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule does not have a significant impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule has no new information collection requirements.

Executive Order 13132, ''Federalism''

This rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on the States; the relationship between the National Government and the States; or the distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 199

Claims, Health care, Health insurance, Military personnel, Pharmacy benefits.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C., Chapter 55.

■ 2. Section 199.6 is amended by revising paragraph (d)(3) to read as follows:

§ 199.6 TRICARE—authorized providers.

* * * * *

(d) * * *

(3) *Pharmacies.* Pharmacies must meet the applicable requirements of state law in the state in which the pharmacy is located. In addition to being subject to the policies and procedures for authorized providers established by this section, additional policies and procedures may be established for authorized pharmacies under § 199.21 of this Part implementing the Pharmacy Benefits Program.

* * * * *

■ 3. Section 199.21 is amended by revising the heading of paragraph (h), and adding new paragraphs (h)(4) and (i)(2)(ii)(D) to read as follows:

§ 199.21 Pharmacy benefits program.

* * * * *

(h) *Obtaining pharmacy services under the retail network pharmacy benefits program.* * * *

(4) *Availability of vaccines/immunizations.* This paragraph (h)(4) applies to the following three immunizations: H1N1 vaccine, seasonal influenza vaccine, and pneumococcal vaccine. A retail network pharmacy may be an authorized provider under the Pharmacy Benefits Program when functioning within the scope of its state laws to provide authorized vaccines/immunizations to an eligible beneficiary. The Pharmacy Benefits Program will cover the vaccine and its administration by the retail network pharmacy, including administration by pharmacists who meet the applicable requirements of state law to administer the vaccine. A TRICARE authorized vaccine/immunization includes vaccines/immunizations authorized as preventive care under the basic program benefits of § 199.4 of this Part, as well as such care authorized for Prime enrollees under the uniform HMO benefit of section 199.18. For Prime enrollees under the uniform HMO benefit, a referral is not required under paragraph (n)(2) of § 199.18 for preventive care vaccines/immunizations received from a retail network pharmacy that is a TRICARE authorized provider. Any additional policies, instructions, procedures, and guidelines appropriate for implementation of this benefit may be issued by the TMA Director, or designee.

(i) * * *

(2) * * *

(ii) * * *

(D) $0.00 co-payment for vaccines/immunizations authorized as preventive care for eligible beneficiaries.

* * * * *

Dated: December 3, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–29432 Filed 12–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–1014]

RIN 1625–AA00

Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor from December 4, 2009, through January 1, 2010. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. This rule will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be enforced on December 4, 2009, from 7 p.m. through 7:30 p.m.; on December 31, 2009, from 8 p.m. through 8:30 p.m.; on December 31, 2009, from 11:45 p.m. through 12:30 a.m. on January 1, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7154, e-mail *Adam.D.Kraft@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL, in 33 CFR 165.931, for the following events:

(1) *Navy Pier Fireworks:* on December 4, 2009, from 7 p.m. through 7:30 p.m.; on December 31, 2009, from 8 p.m. through 8:30 p.m.; on December 31, 2009, from 11:45 p.m. through 12:30 a.m. on January 1, 2010.

All vessels must obtain permission from the Captain of the Port or a designated representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931, Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port or their on-scene representative may be contacted via VHF–FM Channel 16.

Dated: November 30, 2009.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E9–29416 Filed 12–9–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–1052]

RIN 1625–AA00; 1625–AA87

Safety and Security Zone, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety and security zone on the Chicago Sanitary and Ship Canal (CSSC) near Romeoville, IL. This temporary final rule is intended to restrict all vessels from transiting the navigable waters of the CSSC. The safety and security zone is necessary to protect the waters, waterway users and vessels from hazards associated with the U.S. Army Corps of Engineers (USACE) electrical dispersal barrier and for the preparation and safe application of a fish toxicant during a period of time when the barrier will be disabled to conduct maintenance.

DATES: *Effective Date:* In this rule, § 165.923 is suspended and a new temporary section, § 165.T09–1052, is added in the CFR effective December 10, 2009 until 5 p.m. on December 18, 2009. This rule is effective with actual notice for purposes of enforcement from 5 p.m. on November 30, 2009 to 5 p.m. on December 18, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–1052 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1052 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216–902–6045. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for, good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because the emergent planning and execution of maintenance to Barrier IIA by the USACE and the preventative application of the fish toxicant (rotenone), under the direction of the Illinois Department of Natural Resources (IDNR) and the federal coordination of the U.S. Environmental Protection Agency (EPA) resulted in good cause for not publishing an NPRM as there was insufficient time for proper notice. During IDNR's deployment of rotenone, the Coast Guard will enact a safety and security zone to provide for the safety and security of the waters, the waterway facilities and the vessels operating between the Lockport Lock and Dam (mile marker 291) and vicinity of the Ruby Street Bridge (mile marker 288.6).

The application of rotenone to the CSSC will ensure Asian carp do not transit across the fish barrier when Barrier IIA is taken off line and Barrier I, which only operates at one volt per inch, is the sole prophylactic from preventing the Asian carp from entering the Great Lakes. Preparation of the CSSC before application of rotenone is essential in preventing the Asian carp from surviving the fish toxicant. IDNR reports indicate that vessels moored along the Canal wall could create pockets or eddies where the fish toxicant is not able to reach all of the Asian Carp necessitating the Captain of the Port (COTP) Sector Lake Michigan to order their immediate removal from the safety and security zone. Exceptions may possibly be granted upon the review of COTP Sector Lake Michigan.

Rotenone has potential for adverse effects on humans. As such, delaying this rule would be contrary to the public interest of ensuring the safety and security of waterway users and vessels during the preparations, application and clean-up from the use of rotenone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because of the safety and security risk to the waters, commercial vessels and recreational boaters who transit the area. The following discussion and the Background and Purpose section below provide additional support of the Coast Guard's determination that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication.

In 2002, the USACE energized a demonstration electrical dispersal barrier located in the Chicago Sanitary and Ship Canal. The demonstration barrier commonly referred to as ''Barrier I,'' generates a low-voltage electric field (one-volt per inch) across the canal, which connects the Illinois River to Lake Michigan. Barrier I was built to block the passage of aquatic nuisance species, such as Asian carp, and prevent them from moving between the Mississippi River basin and Great Lakes via the canal.

In 2006, the USACE completed construction of a new barrier, ''Barrier IIA.'' Because of its design, Barrier IIA can generate a more powerful electric field (up to four-volts per inch), over a larger area within the Chicago Sanitary and Ship Canal, than Barrier I. Testing was conducted by the USACE which indicated that two-volts per inch is the optimal voltage to deter aquatic nuisance species. The USACE's original plan was to perform testing on the effects of the increased voltage on vessels passing through the fish barrier prior to permanently increasing the voltage. However, after receiving data that the Asian carp were closer to the Great Lakes than expected, the decision was made to immediately energize the barrier to two-volts per inch without prior testing.

In October of 2009, the USACE notified the Coast Guard that barrier IIA needed to be shut-down for required maintenance. As a result, the IDNR, in the coordination of the EPA, will apply rotenone to the CSSC to ensure Asian Carp do not transit through the CSSC while Barrier IIA is disabled. The Coast Guard's understanding is that the application of the rotenone will take approximately fifteen (15) hours followed by neutralizing and clean-up. The application, neutralizing and clean-up is expected to take a minimum of five days and a maximum of ten (10) days. For any questions related to the application of rotenone, please contact Mr. Bill Bolen, U.S. Environmental Protection Agency, Senior Advisor, Great Lakes National Program Office, 77 W. Jackson Blvd., Chicago, IL 60604, at (312) 353–6316.

The timing of the decision to use rotenone during the maintenance did not provide an opportunity for full notice and comment period. Until on-scene preparations begin on December 2, 2009 for the application of rotenone, the Captain of the Port Sector Lake Michigan will make every effort to permit vessels to pass over the fish barrier while it is operating at the two volt per inch level. Once preparations begin on December 2, 2009, until clean-up is complete which at the earliest will be December 7 but may last until December 18 no vessels, except those being used for the rotenone application and clean-up, will be permitted to enter or remain in the safety and security zone. As areas become neutralized and the necessary clean up action has been completed, the Captain of the Port Sector Lake Michigan will re-open certain portions of the waterway in an effort to minimize commerce disruption.

Prior to December 2, 2009, vessels engaging in normal operations are permitted to transit through the safety and security zone. After December 2, 2009, all vessels desiring to enter the safety and security zone must receive permission from the Captain of the Port Sector Lake Michigan to do so and must follow all orders from the Captain of the Port Sector Lake Michigan or her designated on-scene representative while in the zone. As soon as the rotenone clean-up efforts are complete, the Captain of the Port Sector Lake Michigan will notify waterway users by all appropriate means to effect the widest publicity among the affected segments of the public that vessels engaged in normal operations are again being permitted to transit through the security and safety zone.

The Captain of the Port Sector Lake Michigan maintains a live radio watch on VHF–FM Channel 16 and a telephone line that is manned 24-hours a day, seven days a week. The public can obtain information concerning enforcement of the safety zone by contacting the Captain of the Port Sector Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at 414–747–7182.

Background and Purpose

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act of 1996, authorized the USACE to conduct a demonstration project to identify an environmentally sound method for preventing and reducing the dispersal of non-indigenous aquatic nuisance species through the Chicago Sanitary and Ship Canal. The USACE selected an electric barrier because it is a non-lethal deterrent with a proven history, which does not overtly interfere with navigation in the canal.

A demonstration dispersal barrier (Barrier I) was constructed and has been in operation since April 2002. It is located approximately 30 miles from Lake Michigan and creates an electric field in the water by pulsing low voltage DC current through steel cables secured to the bottom of the canal. A second barrier, Barrier IIA, was constructed 800 to 1,300 feet downstream of the Barrier I. The potential field strength for Barrier IIA will be up to four times that of the Barrier I. Barrier IIA was successfully operated for the first time for approximately seven weeks in September and October 2008, while Barrier I was taken down for maintenance. Construction on a third barrier (Barrier IIB) is in the initial stages; Barrier IIB will augment the capabilities of Barriers I and IIA potentially allowing for maintenance operations without the use of rotenone.

Until on-scene preparations begin on December 2, 2009 for the application of rotenone, the Captain of the Port Sector Lake Michigan will make every effort to permit vessels to conduct normal operations. Once preparations begin on December 2, 2009, until clean-up is complete which at the earliest will be December 10 but may last until December 14, no vessels except those being used for the rotenone application and clean-up will be permitted to enter or remain in the safety and security zone. When clean-up is complete, the Captain of the Port Sector Lake Michigan will cause notice that vessels engaged in normal operations may transit the safety and security zone, and will do so by all appropriate means to affect the widest publicity among the affected segments of the public.

Discussion of Rule

This rule suspends 33 CFR 165.923 until 5 p.m. on December 18, 2009. This rule places a safety and security zone on all waters of the Chicago Sanitary Ship and Canal from mile-marker 291 (Lockport Lock and Dam) to mile-marker 288.6.

The Coast Guard has deemed this safety and security zone necessary from November 30, 2009, until December 18, 2009 to the protect the waters, commercial vessels and recreational boaters who transit the area during the preparation, application and clean-up of the rotenone application.

Until 8 a.m. on December 2, 2009, vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), are permitted to transit through the safety and security zone. Vessels may not moor or lay up in the safety and security zone unless preparing to, or engaging in, loading or unloading operations. Any vessel not actively preparing to, or currently engaged in, loading and unloading operations must ask for permission for the Captain of the Port to remain in the safety and security zone.

Beginning at 8 a.m. on December 2, 2009 preparations will begin for the application of rotenone at which time the Captain of the Port Sector Lake Michigan will prohibit all vessels, except those engaged in rotenone application operations or fish carcass removal, from transiting the safety and security zone. Vessels desiring to transit must request permission from the Captain of the Port Sector Lake Michigan or her on-scene representative.

The Captain of the Port Sector Lake Michigan will cause notice of the Coast Guard again permitting vessels to transit this safety and security zone by all appropriate means to effect the widest publicity among the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. In addition, Captain of the Port Sector Lake Michigan maintains a telephone line that is manned 24-hours a day, seven days a week. The public can obtain information concerning enforcement of the safety and security zones by contacting the Captain of the Port Sector Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at 414–747–7182.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on thirteen (13) of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be minimal. This determination is based the following: (1) Initial test results at the current operating parameters of two volts per inch indicate that the majority of commercial and recreational vessels that regularly transit the Chicago Sanitary

and Ship Canal will be permitted to enter the safety zone under certain conditions; and, (2) every effort will be made to reduce the closure time of the canal following the shutdown of Barrier IIA for maintenance and rotenone application.

Because these safety and security zones must be implemented immediately without a full notice and comment period, the full economic impact of this rule is difficult to determine at this time. The Coast Guard urges interested parties to submit comments that specifically address the economic impacts of permanent or temporary closures of the Chicago Sanitary and Ship Canal. Comments can be made online by going to *http://www.regulations.gov,* inserting USCG–2009–1052 in the ''Keyword'' box, and then clicking ''Search.''

Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider whether regulatory actions would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). The Coast Guard determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Therefore, an RFA analysis is not required for this rule. The Coast Guard, nonetheless, expects that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and

Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of the category of actions which do not individually or cumulatively have significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2 Figure 2–1, paragraph (34)(g), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the establishing, disestablishing, or changing of a security or safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES.** The Coast Guard's environmental responsibilities extend only to the creation of a safety and security zone and do not address the application of rotenone. Any questions regarding the rotenone operation should be addressed to Mr. Bill Bolen, U.S. Environmental Protection Agency, Senior Advisor, Great Lakes National Program Office, 77 W. Jackson Blvd., Chicago, IL 60604, at (312) 353–6316.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.923 [Suspended]

■ 2. § 165.923 is suspended from December 10, 2009 until 5 p.m. on December 18, 2009.

■ 3. A new temporary § 165.T09–1052 is added from December 10, 2009 until 5 p.m. on December 18, 2009 as follows:

§ 165.T09–1052 Safety and Security Zone, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Ruby Street Bridge to Lockport Lock Safety and Security Zone.*

(1) The following area is a temporary safety and security zone: All waters of the Chicago Sanitary and Ship Canal located between mile marker 291.0 (Lockport Lock and Dam) and mile marker 288.6 (approximately 500 feet south of the Ruby Street Bridge).

(2) *Enforcement Period.* The safety and security zone will be enforced from 5 p.m. on November 30, 2009, until 5 p.m. on December 18, 2009. Beginning December 1, 2009, the Coast Guard will use actual notice to enforce this safety and security zone until this rule is published in the **Federal Register.**

(3) *Regulations.*

(i) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan, or her representative.

(ii) The ''representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Sector Lake Michigan to act on her behalf. The representative of the Captain of the Port Sector Lake Michigan will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF–FM radio, loudhailer, or by phone. The Captain of the Port Sector Lake Michigan or her representative may be contacted via VHF–FM radio Channel 16 or the Coast Guard Sector Lake Michigan Command Center at 414–747–7182.

(iii) Vessel operators desiring to enter or operate within the safety and security zone must comply with the provisions of paragraph (b)(4)(iv) of this section or contact the Captain of the Port Sector Lake Michigan or her representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety and security zone must comply with all directions given to them by the Captain of the Port Sector Lake Michigan or her representative.

(iv) Until 8 a.m. on December 2, 2009, vessels are permitted to transit the safety and security zone.

(v) Starting at 8 a.m. on December 2, 2009, this safety and security zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sector Lake Michigan or her representative. As soon as clean-up efforts from the rotenone application are complete, the Captain of the Port will cause notice of the safety and security zone being open to vessel transits, by all appropriate means to effect the widest publicity among the affected segments of the public. Such means of notification include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

Dated: November 27, 2009.

P.V. Neffenger,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. E9–29417 Filed 12–9–09; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–4 and CP2010–4; Order No. 326]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 22 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective December 10, 2009 and is applicable beginning October 28, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

Regulatory History, 74 FR 54600 (October 22, 2009).

I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 22 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On October 14, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 22 to the Competitive Product List.[1] The Postal Service asserts that the Priority Mail Contract 22 product is a competitive product ''not of general applicability'' within the meaning of 39

[1] Request of the United States Postal Service to Add Priority Mail Contract 22 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, October 14, 2009 (Request).

U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2010–4.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2010–4.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision, originally filed in Docket No. MC2009–25, authorizing the Priority Mail Contract Group; [2] (2) a redacted version of the contract; [3] (3) a requested change in the Mail Classification Schedule product list; [4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32; [5] (5) a certification of compliance with 39 U.S.C. 3633(a); [6] and (6) an application for non-public treatment of the materials filed under seal.[7] The redacted version of the contract provides that the contract is terminable on 30 days' notice by either party, but could continue for 3 years from the effective date subject to annual price adjustments. Request, Attachment B.

In the Statement of Supporting Justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *Id.,* Attachment E.

The Postal Service filed much of the supporting materials, including the supporting data and the unredacted contract, under seal. The Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, certain terms and conditions, and financial projections, should remain confidential. *Id.,* Attachment F, at 2–3.[8]

In Order No. 317, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[9]

III. Comments

Comments were filed by the Public Representative.[10] No comments were submitted by other interested parties. The Public Representative states that the Postal Service's filing meets the pertinent provisions of title 39 and the relevant Commission rules. *Id.* at 1, 3. He further states that the agreement employs pricing terms favorable to the customer, the Postal Service, and thereby, the public. *Id.* at 3–4. The Public Representative also believes that the Postal Service has provided appropriate justification for maintaining confidentiality in this case. *Id.* at 3.

IV. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 22 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Priority Mail Contract 22 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products consists of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.,* para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.,* para. (h).

No commenter opposes the proposed classification of Priority Mail Contract 22 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 22 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Priority Mail Contract 22 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Priority Mail Contract 22 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Priority Mail Contract 22 indicates that it comports

[2] Attachment A to the Request, reflecting Governors' Decision No. 09–6, April 27, 2009.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] Attachment F to the Request.

[8] In its application for non-public treatment, the Postal Service requests an indefinite extension of non-public treatment of customer-identifying information. *Id.* at 7. For the reasons discussed in PRC Order No. 323, that request is denied. *See* Docket No. MC2010–1 and CP2010–1, Order Concerning Priority Mail Contract 19 Negotiated Service Agreement, October 26, 2009.

[9] PRC Order No. 317, Notice and Order Concerning Priority Mail Contract 22 Negotiated Service Agreement, October 16, 2009 (Order No. 317).

[10] Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 22 Negotiated Service Agreement to the Competitive Products List, October 26, 2009 (Public Representative Comments).

with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date. Following the scheduled termination date of the agreement, the Commission will remove the product from the Competitive Product List.

In conclusion, the Commission approves Priority Mail Contract 22 as a new product. The revision to the Competitive Product List is shown below the signature of this order and is effective upon issuance of this order.

V. Ordering Paragraphs

It is ordered:

1. Priority Mail Contract 22 (MC2010–4 and CP2010–4) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date.

3. The Secretary shall arrange for the publication of this order in the **Federal Register.**

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Judith M. Grady,

Acting Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
- Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail
[Reserved for Class Description]
- Single-Piece Letters/Postcards
  - [Reserved for Product Description]
- Bulk Letters/Postcards
  - [Reserved for Product Description]
- Flats
  - [Reserved for Product Description]
- Parcels
  - [Reserved for Product Description]
- Outbound Single-Piece First-Class Mail International
  - [Reserved for Product Description]
- Inbound Single-Piece First-Class Mail International
  - [Reserved for Product Description]

Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
- High Density and Saturation Letters
  - [Reserved for Product Description]
- High Density and Saturation Flats/Parcels
  - [Reserved for Product Description]
- Carrier Route
  - [Reserved for Product Description]
- Letters
  - [Reserved for Product Description]
- Flats
  - [Reserved for Product Description]
- Not Flat-Machinables (NFMs)/Parcels
  - [Reserved for Product Description]

Periodicals
[Reserved for Class Description]
- Within County Periodicals
  - [Reserved for Product Description]
- Outside County Periodicals
  - [Reserved for Product Description]

Package Services
[Reserved for Class Description]
- Single-Piece Parcel Post
  - [Reserved for Product Description]
- Inbound Surface Parcel Post (at UPU rates)
  - [Reserved for Product Description]
- Bound Printed Matter Flats
  - [Reserved for Product Description]
- Bound Printed Matter Parcels
  - [Reserved for Product Description]
- Media Mail/Library Mail
  - [Reserved for Product Description]

Special Services
[Reserved for Class Description]
- Ancillary Services
  - [Reserved for Product Description]
- Address Correction Service
  - [Reserved for Product Description]
- Applications and Mailing Permits
  - [Reserved for Product Description]
- Business Reply Mail
  - [Reserved for Product Description]
- Bulk Parcel Return Service
  - [Reserved for Product Description]
- Certified Mail
  - [Reserved for Product Description]
- Certificate of Mailing
  - [Reserved for Product Description]
- Collect on Delivery
  - [Reserved for Product Description]
- Delivery Confirmation
  - [Reserved for Product Description]
- Insurance
  - [Reserved for Product Description]
- Merchandise Return Service
  - [Reserved for Product Description]
- Parcel Airlift (PAL)
  - [Reserved for Product Description]
- Registered Mail
  - [Reserved for Product Description]
- Return Receipt
  - [Reserved for Product Description]
- Return Receipt for Merchandise
  - [Reserved for Product Description]
- Restricted Delivery
  - [Reserved for Product Description]
- Shipper-Paid Forwarding
  - [Reserved for Product Description]
- Signature Confirmation
  - [Reserved for Product Description]
- Special Handling
  - [Reserved for Product Description]
- Stamped Envelopes
  - [Reserved for Product Description]
- Stamped Cards
  - [Reserved for Product Description]
- Premium Stamped Stationery
  - [Reserved for Product Description]
- Premium Stamped Cards
  - [Reserved for Product Description]
- International Ancillary Services
  - [Reserved for Product Description]
- International Certificate of Mailing
  - [Reserved for Product Description]
- International Registered Mail
  - [Reserved for Product Description]
- International Return Receipt
  - [Reserved for Product Description]
- International Restricted Delivery
  - [Reserved for Product Description]
- Address List Services
  - [Reserved for Product Description]
- Caller Service
  - [Reserved for Product Description]
- Change-of-Address Credit Card Authentication

[Reserved for Product Description]
Confirm
[Reserved for Product Description]
International Reply Coupon Service
[Reserved for Product Description]
International Business Reply Mail Service
[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List

Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Royal Mail Group Inbound Air Parcel Post Agreement
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M-Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail Contract 4 (MC2009–34 and CP2009–45)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Priority Mail Contract 15 (MC2009–35 and CP2009–54)
Priority Mail Contract 16 (MC2009–36 and CP2009–55)
Priority Mail Contract 17 (MC2009–37 and CP2009–56)
Priority Mail Contract 18 (MC2009–42 and CP2009–63)
Priority Mail Contract 19 (MC2010–1 and CP2010–1)
Priority Mail Contract 20 (MC2010–2 and CP2010–2)
Priority Mail Contract 21 (MC2010–3 and CP2010–3)
Priority Mail Contract 22 (MC2010–4 and CP2010–4)
Outbound International
Direct Entry Parcels Contracts
Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Expedited Package Services 2 (CP2009–50)
Global Plus Contracts
Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M-Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]

Part C—Glossary of Terms and Conditions [Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E9–29395 Filed 12–9–09; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0370; FRL–9090–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Clean Air Interstate Rule; NO_X SIP Call Rule; Amendments to NO_X Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR) and modifies other requirements in Pennsylvania's SIP that interact with CAIR including: The termination of Pennsylvania's NO_X Budget Trading Program; statewide provisions for large, stationary internal combustion engines; statewide provisions for large cement kilns; provisions for small sources of NO_X in the Pennsylvania portion of the Philadelphia 8-hour ozone nonattainment area; and emission reduction credits. EPA is determining that the SIP revision fully implements the CAIR requirements for Pennsylvania. Although the D.C. Circuit found CAIR to be flawed, the rule was remanded without vacatur and thus remains in place. Thus, EPA is continuing to take action on CAIR SIPs as appropriate. CAIR, as promulgated, requires States to reduce emissions of SO_2 and NO_X that significantly contribute to, or interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates and/or ozone in any downwind state. CAIR establishes budgets for SO_2 and NO_X for States that contribute significantly to nonattainment in downwind States and requires the significantly contributing States to submit SIP revisions that implement these budgets. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. In the SIP revision that EPA is approving, Pennsylvania will meet CAIR requirements by participating in these cap-and-trade programs. EPA is approving the SIP revision, with the exceptions noted, as fully implementing the CAIR requirements for Pennsylvania. Consequently, this action will also cause the CAIR Federal Implementation Plans (CAIR FIPs) concerning SO_2, NO_X annual, and NO_X ozone season emissions by Pennsylvania sources to be automatically withdrawn.

DATES: *Effective Date:* The final rule is effective on December 10, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2009–0370. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. What Action Did EPA Propose?

On September 24, 2009 (74 FR 48695), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of a revision to the Pennsylvania SIP that addresses EPA's CAIR requirements and modifies other requirements in Pennsylvania's SIP that interact with CAIR including: The termination of Pennsylvania's NO_X Budget Trading Program; statewide provisions for large, stationary internal combustion engines; statewide provisions for large cement kilns; provisions for small sources of NO_X in the Pennsylvania portion of the Philadelphia 8-hour ozone nonattainment area; and emission reduction credits.

II. Summary of Pennsylvania SIP Revision

On May 23, 2008, the Pennsylvania Department of Environmental Protection (PADEP) submitted a full CAIR SIP revision to meet the requirements of CAIR, which was promulgated on May 12, 2005 (70 FR 25162), and subsequently revised on April 28, 2006, and December 13, 2006. The SIP revision consisted of amendments to Pennsylvania regulations codified at 25 Pa. Code Chapters 121, 129, and 145. The SIP revision addresses all the requirements of the 40 CFR part 96 model rules set forth in the May 12, 2005 CAIR rulemaking. In addition, the SIP revision modifies other requirements in Pennsylvania's SIP that interact with CAIR. A detailed discussion of the CAIR requirements, the CAIR history (including the CAIR remand), Pennsylvania's CAIR submittal, the other modifications in the SIP revision that interact with CAIR, and EPA's rationale for approval of the Pennsylvania SIP revision may be found in the NPR and will not be repeated here. No comments were received.

EPA notes that, in *North Carolina,* 531 F.3d at 916–21, the Court determined, among other things, that the State SO_2 and NO_X budgets established in CAIR were arbitrary and capricious.[1] However, as discussed above, the Court also decided to remand CAIR but to leave the rule in place in order to ''temporarily preserve the environmental values covered by CAIR'' pending EPA's development and promulgation of a replacement rule that remedies CAIR's flaws. *North Carolina,* 550 F.3d at 1178. EPA had indicated to the Court that development and promulgation of a replacement rule would take about two years. *Reply in Support of Petition for Rehearing or Rehearing en Banc* at 5 (filed Nov. 17, 2008 in *North Carolina* v. *EPA,* Case No. 05–1224, D.C. Cir.). The process at EPA of developing a proposal that will undergo notice and comment and result in a final replacement rule is ongoing. In the meantime, consistent with the

[1] The Court also determined that the CAIR trading programs were unlawful (*id.* at 906–8) and that the treatment of title IV allowances in CAIR was unlawful (*id.* at 921–23). For the same reasons that EPA is approving the provisions of Pennsylvania's SIP revision that use the SO_2 and NO_X budgets set in CAIR, EPA is also approving, as discussed below, Pennsylvania's SIP revision to the extent the SIP revision adopts the CAIR trading programs, including the provisions, addressing applicability, allowance allocations, and use of title IV allowances.

Court's orders, EPA is implementing CAIR by approving State SIP revisions that are consistent with CAIR (such as the provisions setting State SO_2 and NO_X budgets for the CAIR trading programs) in order to ''temporarily preserve'' the environmental benefits achievable under the CAIR trading programs.

III. What Is the Final Action?

EPA is approving the Pennsylvania CAIR SIP revision submitted on July 23, 2008. Under the SIP revision, Pennsylvania will participate in the EPA-administered cap-and-trade programs for NO_X annual, NO_X ozone season, and SO_2 annual emissions. The SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(o), with regard to SO_2 emissions. As a consequence of the SIP approval, the CAIR FIPs for Pennsylvania are automatically withdrawn, in accordance with the automatic withdrawal provisions of EPA's November 2, 2007 rulemaking (72 FR 62338). The automatic withdrawal is reflected in the rule text that accompanies this notice and deletes and reserves the provisions in Part 52 that establish the CAIR FIPs for Pennsylvania sources.

The SIP revision also modifies other requirements in Pennsylvania's SIP that interact with CAIR including: The termination of Pennsylvania's NO_X Budget Trading Program; statewide provisions for large, stationary internal combustion engines; statewide provisions for large cement kilns; provisions for small sources of NO_X in the Pennsylvania portion of the Philadelphia 8-hour ozone nonattainment area; and emission reduction credits.

IV. What Is the Effective Date?

EPA finds that there is good cause for this approval to become effective upon publication because a delayed effective date is unnecessary due to the nature of the approval, which allows the Commonwealth, as indicated in the NPR for this rulemaking, to use its own methodology for distribution and timing of NO_X allowances. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''

CAIR SIP approvals relieve states and CAIR sources within states from being subject to provisions in the CAIR FIPs that otherwise would apply to them, allowing states to implement CAIR based on their SIP-approved state rule. The relief from these obligations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, Pennsylvania's relief from these obligations provides good cause to make this rule effective immediately upon publication, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule relieves obligations rather than imposes obligations, affected parties, such as the Commonwealth of Pennsylvania and CAIR sources within the Commonwealth, do not need time to adjust and prepare before the rule takes effect.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed,

and shall not postpone the effectiveness of such rule or action.

This action to approve the Pennsylvania SIP revision to meet the requirements of CAIR and modify associated provisions that interact with CAIR may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 25, 2009.

Shawn M. Garvin,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by:

■ a. Revising entries for Title 25, Chapter 121, Section 121.1, Chapter 129, Sections 129.201, 129.202, and 129.204; Subchapter B, Section 145.113, and Subchapter C, Section 145.143.

■ b. Adding, in order of Section number, entries for Title 25, Chapter 145, Subchapter A, Section 145.8; Subchapter D, Sections 145.201 through 145.205, Sections 145.211 through 145.213, and Sections 145.221 through 145.223.

The amendments read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
TITLE 25. ENVIRONMENTAL PROTECTION ARTICLE III. AIR RESOURCES				
*	*	*	*	*
CHAPTER 121. GENERAL PROVISIONS				
Section 121.1	Definitions	4/12/08	12/10/09 *[Insert page number where the document begins].*	Add definition for ''vintage or vintage year.''
*	*	*	*	*
CHAPTER 129. STANDARDS FOR SOURCES ADDITIONAL NO_X REQUIREMENTS				
Section 129.201	Boilers	4/12/08	12/10/09 *[Insert page number where the document begins].*	Revised section.
Section 129.202	Stationary combustion turbines	4/12/08	12/10/09 *[Insert page number where the document begins].*	Revised section.
*	*	*	*	*
Section 129.204	Emission accountability	4/12/08	12/10/09 *[Insert page number where the document begins].*	Revised section.
*	*	*	*	*
CHAPTER 145. INTERSTATE POLLUTION TRANSPORT REDUCTION Subchapter A. NO_X Budget Trading Program General Provisions				
*	*	*	*	*
Section 145.8	Transition to CAIR NO_X Trading Programs.	4/12/08	12/10/09 *[Insert page number where the document begins].*	New section.
*	*	*	*	*
Subchapter B. Emissions of NO_X From Stationary Internal Combustion Engines				
*	*	*	*	*
Section 145.113	Standard requirements	4/12/08	12/10/09 *[Insert page number where the document begins].*	New subsection d.
Subchapter C. Emissions of NO_X From Cement Manufacturing				
*	*	*	*	*
Section 145.143	Standard requirements	4/12/08	12/10/09 *[Insert page number where the document begins].*	
Subchapter D. CAIR NO_X and SO_2 Trading Programs—General Provisions				
Section 145.201	Purpose	4/12/08	12/10/09 *[Insert page number where the document begins].*	

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
Section 145.202	Definitions	4/12/08	12/10/09 *[Insert page number where the document begins].*	
Section 145.203	Applicability	4/12/08	12/10/09 *[Insert page number where the document begins].*	
Section 145.204	Incorporation of Federal regulations by reference.	4/12/08	12/10/09 *[Insert page number where the document begins].*	
ADDITIONAL REQUIREMENTS FOR CHAPTER 127 EMISSION REDUCTION CREDIT PROVISIONS				
Section 145.205	Emission reduction credit provisions.	4/12/08	12/10/09 *[Insert page number where the document begins].*	
ADDITIONAL REQUIREMENTS FOR CAIR NO_X ANNUAL TRADING PROGRAM				
Section 145.211	Timing Requirements for CAIR NO_X allowance allocations.	4/12/08	12/10/09 *[Insert page number where the document begins].*	
Section 145.212	CAIR NO_X allowance allocations	4/12/08	12/10/09 *[Insert page number where the document begins].*	
Section 145.213	Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.170–96.175.	4/12/08	12/10/09 *[Insert page number where the document begins].*	
ADDITIONAL REQUIREMENTS FOR CAIR NO_X OZONE SEASON TRADING PROGRAM				
Section 145.221	Timing requirements for CAIR NO_X ozone season allowance allocations.	4/12/08	12/10/09 *[Insert page number where the document begins].*	
Section 145.222	CAIR NO_X Ozone Season allowance allocations.	4/12/08	12/10/09 *[Insert page number where the document begins].*	
Section 145.223	Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.370–96.375.	4/12/08	12/10/09 *[Insert page number where the document begins].*	
*	*	*	*	*	*	*

* * * * *

§ 52.2040 [Removed and Reserved]

■ 3. Section 52.2040 is removed and reserved.

§ 52.2041 [Removed and Reserved]

■ 4. Section 52.2041 is removed and reserved.

[FR Doc. E9–29216 Filed 12–9–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 414, 415, 485, and 498

[CMS–1413–CN3]

RIN 0938–AP40

Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects several technical and typographical errors in the final rule with comment period that appeared in the November 25, 2009, **Federal Register** entitled ''Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010''.

DATES: *Effective Date:* This correction is effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Diane Milstead, (410) 786–3355.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. E9–26502 of November 25, 2009 (74 FR 61738) (hereinafter referred to as the CY 2010 PFS final rule with comment period), there were a number of technical and typographical errors that are identified and corrected in the Correction of Errors section of this notice. The provisions of this notice are effective as if they had been included in the CY 2010 PFS final rule with comment period. Accordingly, the corrections are effective January 1, 2010.

II. Summary of Errors

A. Errors in the Preamble

On page 61738, we are correcting the figure for the CY 2010 conversion factor (CF). This change results from a

technical error in adjusting relative value units (RVUs) to reflect the agency's policy related to the consultation codes.

On page 61746, we are correcting the note referencing the CF used in Table 1.

On pages 61747 and 61748, we are replacing Table 1, Calculation of practice expense (PE) relative value units (RVUs) under Methodology for Selected Codes.

On page 61941, we are correcting language concerning the Five–year Review of work and the potential for adjustment of PE RVUS.

On page 61952, in Table 30, we are correcting the CMS 2010 Interim work RVU (WRVU) for CPT code 51729–26.

On page 61955, we are correcting the reference to the status indicator assigned to CPT code 90470.

On page 61968, we are correcting the figures for the CY 2010 physician fee schedule (PFS) CF and national anesthesia CF for the reasons indicated above.

On page 61969, we are correcting the discussion concerning the CY 2010 CF for the reasons indicated above.

On page 61969, in Table 44, we are correcting the lines concerning the CY 2010 CF budget neutrality adjustment and CY 2010 CF for the reasons indicated above.

On page 61969, we are correcting the language preceding Table 45 for the reasons indicated above.

On page 61970, in Table 45, we are correcting the lines concerning the CY 2010 anesthesia adjustment and the CY 2010 anesthesia CF contained in the table for the reasons indicated above.

On pages 61985 and 61986, we are replacing Table 50 in its entirety to correct the payment amounts for CY 2010.

On page 62001, in the discussion concerning removing self-administered drugs from the SGR calculation we are deleting the word ''proposal'' which was inadvertently included in the sentence and substituting the word ''change''. We are also correcting the CY 2010 payment amounts associated with CPT code 99203.

B. Errors in the Addenda

On pages 62044 through 62143 of Addendum B, Relative Value Units and Related Information Used in Determining Medicare Payments for 2009, the RVUs and status indicators listed for CPT codes 90470, and 95803, 95803–TC 95803–26 are corrected. In addition the RVUs for CPT codes 51729, 51729–26, 74261, 74261–TC, 74262, 74262–TC, 75571, 75571–TC, 75572, 75572–TC, 75573, 75573–TC, 77078, 77078–TC, 77084, 77084–TC, 94011, 94012, 94013, 99221, 99222, 99223, 99304, 99305 and 99306, G0425, G0426, G0427, G0252–26 and the global period for CPT codes 75565, 75565–TC, 75565–26 are corrected.

On pages 62145 and 62146, of Addendum C, Codes with Interim RVUs, the global period listed for CPT code 75565 and the RVUs for CPT codes 51729–26, 94011, 94012 and 94013 are corrected.

III. Correction of Errors

In FR Doc. E9–26502 of November 25, 2009 (74 FR 61738), make the following corrections:

A. Corrections to the Preamble

1. On page 61738, in the 1st column; in the 2nd paragraph, line 13, the figure ''$28.4061'' is corrected to read ''$28.3895.''

2. On page 61746, in the 3rd column; in the last paragraph, line 3, the figure ''$28.3769'' is corrected to read ''$36.0666.''

3. On pages 61747 and 61748, Table 1 is replaced in its entirety to reflect the corrected CF.

BILLING CODE 4120–01–P

TABLE 1: Calculation of PE RVUs Under Methodology For Selected Codes

		Step	Source	Formula	99213	33533	71020	71020TC	7102026	93000	93005	93010
					Office visit, est Nonfacility	CABG, arterial, single Facility	Chest x-ray Nonfacility	Chest x-ray Nonfacility	Chest x-ray Nonfacility	ECG, complete Nonfacility	ECG, tracing Nonfacility	ECG, report Nonfacility
(1)	Labor cost (Lab)	Step 1	AMA		$13.32	$77.52	$5.74	$5.74	$0.00	$6.12	$6.12	$0.00
(2)	Suppy cost (Sup)	Step 1	AMA		$2.98	$7.34	$3.39	$3.39	$0.00	$1.19	$1.19	$0.00
(3)	Equipment cost (Eqp)	Step 1	AMA		$0.19	$0.65	$8.17	$8.17	$0.00	$0.12	$0.12	$0.00
(4)	Direct cost (Dir)	Step 1		=(1)+(2)+(3)	$16.50	$85.51	$17.31	$17.31	$0.00	$7.43	$7.43	$0.00
(5)	Direct adjustment (Dir Adj)	Steps 2-4	See footnote*		0.4991	0.4991	0.4991	0.4991	0.4991	0.4991	0.4991	0.4991
(6)	Adjusted labor	Steps 2-4	=Lab*Dir Adj	=(1)*(5)	$6.65	$38.69	$2.87	$2.87	$0.00	$3.06	$3.06	$0.00
(7)	Adjusted supplies	Steps 2-4	=Sup*Dir Adj	=(2)*(5)	$1.49	$3.66	$1.69	$1.69	$0.00	$0.60	$0.60	$0.00
(8)	Adjusted equipment	Steps 2-4	=Eqp*Dir Adj	=(3)*(5)	$0.10	$0.33	$4.08	$4.08	$0.00	$0.06	$0.06	$0.00
(9)	Adjusted direct	Steps 2-4		=(6)+(7)+(8)	$8.23	$42.68	$8.64	$8.64	$0.00	$3.71	$3.71	$0.00
(10)	Conversion Factor (CF)	Step 5	MFS		36.06666	36.06666	36.06666	36.06666	36.06666	36.06666	36.06666	36.06666
(11)	Adj. labor cost converted	Step 5	=(Lab*Dir Adj)/CF	=(6)/(10)	0.18	1.07	0.08	0.08	-	0.08	0.08	-
(12)	Adj. supply cost converted	Step 5	=(Sup*Dir Adj)/CF	=(7)/(10)	0.04	0.10	0.05	0.05	-	0.02	0.02	-
(13)	Adj. equip cost converted	Step 5	=(Eqp*Dir Adj)/CF	=(8)/(10)	-	0.01	0.11	0.11	-	-	-	-
(14)	Adj. direct cost converted	Step 5		=(11)+(12)+(13)	0.23	1.18	0.24	0.24	-	0.10	0.10	-
(15)	Wrk RVU	Setup File	MFS		0.97	33.75	0.22	-	0.22	0.17	0.00	0.17
(16)	Dir_pct	Steps 6, 7	Surveys		26.0%	18.0%	28.0%	28.0%	28.0%	29.0%	29.0%	29.0%
(17)	Ind_pct	Steps 6, 7	Surveys		74.0%	82.0%	72.0%	72.0%	72.0%	71.0%	71.0%	71.0%
(18)	Ind. Alloc. formula (1st part)	Step 8	See Step 8									
(19)	Ind. Alloc. (1st part)	Step 8		See (18)	0.66	5.38	0.60	0.60	-	0.25	0.25	-
(20)	Ind. Alloc. formulas (2nd part)	Step 8	See Step 8									

		Step	Source	Formula	99213	33533	71020	71020TC	7102026	93000	93005	93010
					Office visit, est Nonfacility	CABG, arterial, single Facility	Chest x-ray Nonfacility	Chest x-ray Nonfacility	Chest x-ray Nonfacility	ECG, complete Nonfacility	ECG, tracing Nonfacility	ECG, report Nonfacility
(21)	Ind. Alloc. (2nd part)	Step 8		See (20)	0.97	33.75	0.30	0.08	0.22	0.25	0.08	0.17
(22)	Indirect Allocator (1st+2nd)	Step 8		=(19)+(21)	1.63	39.13	0.90	0.68	0.22	0.51	0.34	0.17
(23)	Indirect Adjustment (Ind Adj)	Steps 9-11	See footnote**		0.370	0.370	0.370	0.370	0.370	0.370	0.370	0.370
(24)	Adjusted Indirect Allocator	Steps 9-11	=Ind Alloc * Ind Adj		0.60	14.36	0.33	0.25	0.08	0.19	0.12	0.06
(25)	Ind.Practice Cost Index (PCI)	Steps 12-16	See Steps 12-16		1.090	0.890	0.860	0.860	0.860	0.930	0.930	0.930
(26)	Adjusted Indirect	Step 17	= Adj. Ind Alloc*PCI	=(24)*(25)	0.66	12.81	0.28	0.21	0.07	0.17	0.12	0.06
(27)	PE RVU	Steps 18-19	=(Adj Dir+Adj Ind) *budn	=((14)+(26)) *budn	0.88	13.91	0.52	0.45	0.07	0.28	0.22	0.06

Note: PE RVU in Table 1, row 27, may not match Addendum B due to rounding.

* The direct adj = [current pe rvus * CF * avg dir pct] / [sum direct inputs] = [Step 2] / [Step 3]

** The indirect adj = [current pe rvus * avg ind pct] / [sum of ind allocators] = [Step 9] / [Step 10]

BILLING CODE 4120-01-C

4. On page 61941, in the 2nd column; in the 3rd paragraph, lines 12 through 14, the phrase ''the PE inputs, and we could be impacted and we would them accordingly'' is corrected to read ''the PE inputs could be impacted and we would therefore adjust them accordingly.''

5. On page 61952, in Table 30, line 15, is corrected to read as follows:

#	51729	.....	26	CYSTOMETROGRAM W/VP&UP	2.51	Agree	2.11

6. On page 61955, in the 1st column; in the 2nd full paragraph, the last sentence, ''We have assigned a status indicator of ''N'' (Non-covered) to this service and will publish the AMA RUC-recommended value in accordance with our practice for non-covered CPT codes'' is corrected to read ''We have assigned a status indicator of ''I'' (Not valid for Medicare purposes. Medicare uses another code for the reporting of and the payment for these services). We will publish the AMA RUC-recommended value in accordance with the practice for non-covered CPT codes.''

7. On page 61968, in the 2nd column; in the 1st full paragraph under Table 43,

a. Line 1, the figure ''$28.4061'' is corrected to read ''$28.3895''.

b. Line 3, the figure ''$16.6191'' is corrected to read ''$16.6108''.

8. On page 61969,

a. In the 3rd column, in the 1st partial paragraph, line 3, the figure ''1.00103'' is corrected to read ''1.000445''.

b. In Table 44 the last two lines are corrected to read as follows:

TABLE 44—CALCULATION OF THE CY 2010 PFS CF

CY 2010 CF Budget Neutrality Adjustment	0.0445 percent (1.000445).	
CY 2010 Conversion Factor	.....	$28.3895

c. In the 3rd column, the paragraph following Table 44, the last 2 lines, the phrase ''policies for PE and malpractice RVUs'' is corrected to read ''policies for work, PE, and malpractice RVUs''.

9. On page 61970, Table 45, the last two lines of are corrected to read as follows:

TABLE 45—CALCULATION OF THE CY 2010 ANESTHESIA CONVERSION FACTOR

CY 2010 Anesthesia Adjustment	0.94 percent (1.0094).	
CY 2010 Anesthesia Conversion Factor	.....	$16.6108

10. On pages 61985 and 61986, Table 50 is corrected in its entirety including the title to read as follows:

BILLING CODE 4120–01–P

TABLE 50: Impact of Final Rule with Comment Period and Physician Update on CY 2010 Payment for Selected Procedures

CPT[1]/ HCPCS	MOD	Description	Facility			Non-facility		
			2009	2010	Percent Change	2009	2010	Percent Change
11721		Debride nail, 6 or more	$27.77	$20.72	-25%	40.39	$31.23	-23%
17000		Destruct premalg lesion	$48.69	$40.88	-16%	69.97	$57.91	-17%
27130		Total hip arthroplasty	$1,359.71	$1,082.21	-20%	NA	NA	NA
27244		Treat thigh fracture	$1,144.39	$916.98	-20%	NA	NA	NA
27447		Total knee arthroplasty	$1,456.37	$1,157.72	-21%	NA	NA	NA
33533		CABG, arterial, single	$1,892.05	$1,533.32	-19%	NA	NA	NA
35301		Rechanneling of artery	$1,067.93	$868.15	-19%	NA	NA	NA
43239		Upper GI endoscopy, biopsy	$165.55	$134.00	-19%	323.16	$256.92	-20%
66821		After cataract laser surgery	$251.38	$216.33	-14%	266.53	$228.54	-14%
66984		Cataract surg w/iol, 1 stage	$638.74	$548.77	-14%	NA	NA	NA
67210		Treatment of retinal lesion	$561.56	$478.65	-15%	580.67	$493.69	-15%
71010		Chest x-ray	NA	NA	NA	24.16	$18.17	-25%
71010	26	Chest x-ray	$9.02	$7.10	-21%	9.02	$7.10	-21%
77056		Mammogram, both breasts	NA	NA	NA	107.48	$82.90	-23%
77056	26	Mammogram, both breasts	$44.36	$34.64	-22%	44.36	$34.64	-22%
77057		Mammogram, screening	NA	NA	NA	81.15	$61.61	-24%
77057	26	Mammogram, screening	$35.71	$27.82	-22%	35.71	$27.82	-22%
77427		Radiation tx management, x5	$188.27	$153.02	-19%	188.27	$153.02	-19%
78465	26	Heart image (3d), multiple	$78.99	$62.17	-21%	78.99	$62.17	-21%
88305	26	Tissue exam by pathologist	$37.15	$28.96	-22%	37.15	$28.96	-22%
90801		Psy dx interview	$128.04	$100.21	-22%	152.92	$120.94	-21%
90862		Medication management	$45.08	$35.77	-21%	55.18	$44.29	-20%
90935		Hemodialysis, one evaluation	$66.36	$53.09	-20%	NA	NA	NA
92012		Eye exam established pat	$45.80	$38.33	-16%	70.69	$58.77	-17%
92014		Eye exam & treatment	$70.33	$58.77	-16%	103.15	$85.74	-17%
92980		Insert intracoronary stent	$847.93	$644.16	-24%	NA	NA	NA
93000		Electrocardiogram, complete	$20.92	NA	NA	20.92	$15.61	-25%
93010		Electrocardiogram report	$9.02	$7.10	-21%	9.02	$7.10	-21%
93015		Cardiovascular stress test	$100.27	$72.96	-27%	100.27	$72.96	-27%
93307	26	Echo exam of heart	$49.77	$38.33	-23%	49.77	$38.33	-23%
93510	26	Left heart catheterization	$248.86	$185.10	-26%	248.86	$185.10	-26%
98941		Chiropractic manipulation	$30.30	$24.13	-20%	33.90	$27.25	-20%
99203		Office/outpatient visit, new	$68.17	$57.35	-16%	91.97	$76.94	-16%
99213		Office/outpatient visit, est	$44.72	$38.04	-15%	61.31	$51.67	-16%
99214		Office/outpatient visit, est	$69.25	$58.77	-15%	92.33	$77.50	-16%
99222		Initial hospital care	$122.63	$100.21	-18%	NA	NA	NA
99223		Initial hospital care	$180.33	$147.06	-18%	NA	NA	NA
99231		Subsequent hospital care	$37.15	$30.09	-19%	NA	NA	NA
99232		Subsequent hospital care	$66.72	$54.22	-19%	NA	NA	NA
99233		Subsequent hospital care	$95.58	$77.79	-19%	NA	NA	NA
99236		Observ/hosp same date	$207.38	$166.08	-20%	NA	NA	NA

CPT[1]/ HCPCS	MOD	Description	Facility			Non-facility		
			2009	2010	Percent Change	2009	2010	Percent Change
99239		Hospital discharge day	$96.30	$77.79	-19%	NA	NA	NA
99243		Office consultation	$97.38	Discontined	Discontinued	124.79	Discontinued	Discontinued
99244		Office consultation	$154.00	Discontined	Discontinued	184.30	Discontinued	Discontinued
99253		Inpatient consultation	$114.69	Discontined	Discontinued	NA	NA	NA
99254		Inpatient consultation	$165.55	Discontined	Discontinued	NA	NA	NA
99283		Emergency dept visit	$61.31	$48.55	-21%	NA	NA	NA
99284		Emergency dept visit	$114.33	$91.13	-20%	NA	NA	NA
99291		Critical care, first hour	$212.07	$170.05	-20%	253.91	$203.27	-20%
99292		Critical care, addÏl 30 min	$106.04	$84.88	-20%	114.69	$91.70	-20%
99348		Home visit, est patient	NA	NA	NA	79.35	$63.88	-19%
99350		Home visit, est patient	NA	NA	NA	160.86	$130.31	-19%
G0008		Admin influenza virus vac	NA	NA	NA	20.92	$16.75	-20%

11. On page 62001,

a. In the 1st column, in the 1st full paragraph, line 19, the phrase ''proposal will cost'' is corrected to read ''change will cost''.

b. In the 3rd column, the 1st full paragraph, the sentence ''Based on this rule, the 2010 national payment amount in the non-facility setting for CPT code 99203, as shown in Table 49, is $76.98 which means that, in 2010, the beneficiary coinsurance for this service would be $15.40.'' is corrected to read ''Based on this rule, the 2010 national payment amount in the non-facility setting for CPT code 99203, as shown in Table 50 is $76.94 which means that, in 2010, the beneficiary coinsurance for this service would be $15.38.''

B. Corrections to the Addenda

1. On pages 62044 through 62143, in Addendum B: Relative Value Units and Related Information Used in Determining Medicare Payments for 2010, the following CPT codes are corrected to read as follows:

CPT[1]/ HCPCS	Mod	Status	Description	Physician Work RVUs[2]	Fully Implemented Non-Facility PE RVUs[2]	Year 2010 Transitional Non-Facility PE RVUs[2]	Fully Implemented Facility PE RVUs[2]	Year 2010 Transitional Facility PE RVUs[2]	Mal-Practice RVUs[2]	Global
29870		A	Knee arthroscopy, dx	5.19	9.05	9.05	5.02	4.66	0.72	090
36481			Insertion of catheter, vein	6.98	45.38	14.46	2.41	2.41	0.65	000
37183		A	Remove hepatic shunt (tips)	7.99	127.96	127.96	2.45	3.16	0.54	000
47382		A	Percut ablate liver rf	15.22	102.11	102.11	5.05	6.35	1.06	010
50200		A	Renal biopsy perq	2.63	12.11	12.11	1.08	1.24	0.22	000
51729		A	Cystometrogram w/vp&up	2.51	6.03	6.03	NA	NA	0.14	000
51729	26	A	Cystometrogram w/vp&up	2.51	0.88	0.88	0.88	0.88	0.13	000
55873		A	Cryoablate prostate	13.60	147.06	147.06	6.30	10.14	1.46	090
74261		A	Ct colonography, w/o dye	2.28	8.95	8.95	NA	NA	0.10	XXX
74261	TC	A	Ct colonography, w/o dye	0.00	8.26	8.26	NA	NA	0.01	XXX
74262		A	Ct colonography, w/dye	2.50	10.12	10.12	NA	NA	0.11	XXX
74262	TC	A	Ct colonography, w/dye	0.00	9.36	9.36	NA	NA	0.01	XXX
75565		A	Card mri vel flw map add-on	0.25	2.27	2.27	NA	NA	0.02	ZZZ
75565	TC	A	Card mri vel flw map add-on	0.00	2.18	2.18	NA	NA	0.01	ZZZ
75565	26	A	Card mri vel flw map add-on	0.25	0.09	0.09	0.09	0.09	0.01	ZZZ
75571		A	Ct hrt w/o dye w/ca test	0.58	1.88	1.88	NA	NA	0.02	XXX
75571	TC	A	Ct hrt w/o dye w/ca test	0.00	1.70	1.70	NA	NA	0.01	XXX
75572		A	Ct hrt w/3d image	1.75	5.49	5.49	NA	NA	0.05	XXX
75572	TC	A	Ct hrt w/3d image	0.00	4.92	4.92	NA	NA	0.01	XXX
75573		A	Ct hrt w/3d image, congen	2.55	7.74	7.74	NA	NA	0.07	XXX
75573	TC	A	Ct hrt w/3d image, congen	0.00	6.97	6.97	NA	NA	0.01	XXX
77078		A	Ct bone density, axial	0.25	2.46	3.91	NA	NA	0.02	XXX
77078	TC	A	Ct bone density, axial	0.00	2.38	3.82	NA	NA	0.01	XXX
77084		A	Magnetic image, bone marrow	1.60	7.79	12.49	NA	NA	0.08	XXX
77084	TC	A	Magnetic image, bone marrow	0.00	7.29	11.91	NA	NA	0.01	XXX
90470		I	Immune admin H1N1 im/nasal	0.20	0.42	0.42	NA	NA	0.01	XXX
92610		A	Evaluate swallowing function	1.30	0.79	1.79	0.57	0.57	0.01	XXX
94011		A	Up to 2 yrs old, spirometry	2.00	NA	NA	0.62	0.62	0.05	XXX
94012		A	= 2 yrs, spiromtry w/dilator	3.10	NA	NA	0.93	0.93	0.08	XXX
94013		A	= 2 yrs, lung volumes	0.66	NA	NA	0.18	0.18	0.03	XXX
95803		A	Actigraphy testing	1.00	2.22	2.22	NA	NA	0.05	XXX
95803	TC	A	Actigraphy testing	0.00	1.90	1.90	NA	NA	0.01	XXX
95803	26	A	Actigraphy testing	1.00	0.32	0.32	0.32	0.32	0.04	XXX
99221		A	Initial hospital care	1.92	NA	NA	0.71	0.59	0.13	XXX
99222		A	Initial hospital care	2.61	NA	NA	0.99	0.82	0.15	XXX
99223		A	Initial hospital care	3.86	NA	NA	1.45	1.20	0.20	XXX
99304		A	Nursing facility care, init	1.64	0.77	0.62	0.77	0.62	0.10	XXX
99305		A	Nursing facility care, init	2.35	1.05	0.82	1.05	0.82	0.14	XXX

CPT[1]/ HCPCS	Mod	Status	Description	Physician Work RVUs[2]	Fully Implemented Non-Facility PE RVUs[2]	Year 2010 Transitional Non-Facility PE RVUs[2]	Fully Implemented Facility PE RVUs[2]	Year 2010 Transitional Facility PE RVUs[2]	Mal-Practice RVUs[2]	Global
99306		A	Nursing facility care, init	3.06	1.30	1.01	1.30	1.01	0.16	XXX
G0252	26	N	PET imaging initial dx	1.50	0.55	0.60	0.55	0.60	0.08	XXX
G0341		A	Percutaneous islet celltrans	6.98	45.38	14.46	NA	NA	0.35	000
G0425		A	Inpt telehealth consult 30m	1.92	NA	NA	0.71	0.71	0.13	XXX
G0426		A	Inpt telehealth consult 50 m	2.61	NA	NA	0.99	0.99	0.15	XXX
G0427		A	Inpt telehealth consult 70/>m	3.86	NA	NA	1.45	1.45	0.20	XXX

[1] CPT codes and descriptors only are copyright 2009 American Medical Association. All Rights Reserved. Applicable FARS/DFARS apply.
[2] If values are reflected for codes not payable by Medicare, please note that these values have been established as a courtesy to the general public and are not used for Medicare payment.
[3] Work RVUs reflect increases for 10 and 90 day global period codes as a result of the elimination of the consultation codes.
[4] The budget neutrality reduction from the chiropractic demonstration is not reflected in the RVUs for CPT codes 98940, 98941, and 98942. The required reduction will only be reflected in the files used for Medicare payment.

2. On pages 62145 and 62146, in Addendum C: Codes with Interim RVUs, the following CPT codes are corrected to read as follows:

CPT[1]/ HCPCS	Mod	Status	Description	Physician Work RVUs[2]	Fully Implemented Non-Facility PE RVUs[2]	Year 2010 Transitional Non-Facility PE RVUs[2]	Fully Implemented Facility PE RVUs[2]	Year 2010 Transitional Facility PE RVUs[2]	Mal-Practice RVUs[2]	Global
51729	26	A	Cystometrogram w/vp&up	2.51	0.88	0.88	0.88	0.88	0.13	000
75565	26	A	Card mri vel flw map add-on	0.25	0.09	0.09	0.09	0.09	0.01	ZZZ
94011		A	Up to 2 yrs old, spirometry	2.00	NA	NA	0.62	0.62	0.05	XXX
94012		A	= 2 yrs, spiromtry w/dilator	3.10	NA	NA	0.93	0.93	0.08	XXX
94013		A	= 2 yrs, lung volumes	0.66	NA	NA	0.18	0.18	0.03	XXX

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[2] If values are reflected for codes not payable by Medicare, please note that these values have been established as a courtesy to the general public and are not used for Medicare payment.
[3] Work RVUs reflect increases for 10 and 90 day global period codes as a result of the elimination of the consultation codes.
[4] The budget neutrality reduction from the chiropractic demonstration is not reflected in the RVUs for CPT codes 98940, 98941, and 98942. The required reduction will only be reflected in the files used for Medicare payment.

BILLING CODE 4120–01–C

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive the notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons for it in the rule.

Section 553(d) of the APA ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This document merely corrects typographical and technical errors made in FR Doc. E9–26502, the CY 2010 PFS final rule with comment period, which appeared in the November 25, 2009 **Federal Register** (74 FR 61738), and is (with limited exceptions not relevant to these corrections, but noted in the rule), effective January 1, 2010. The provisions of the final rule with comment period have been subjected previously to notice and comment procedures. The corrections contained in this document are consistent with, and do not make substantive changes to, the payment methodologies and policies adopted in the CY 2010 PFS final rule with comment period. As such, these corrections are being made to ensure the CY 2010 PFS final rule with comment period accurately reflects the policies adopted in that rule. We find, therefore, for good cause that it is unnecessary and would be contrary to the public interest to undertake further notice and comment procedures to incorporate

these corrections into the CY 2010 PFS final rule with comment period.

For the same reasons, we are also waiving the 30-day delay in effective date for these corrections. We believe that it is in the public interest to ensure that the CY 2010 PFS final rule with comment period accurately states our policies as of the date they take effect. Therefore, we find that delaying the effective date of these corrections beyond the effective date of the final rule with comment period would be contrary to the public interest. In so doing, we find good cause to waive the 30-day delay in the effective date.

Authority: Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: December 3, 2009.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. E9–29256 Filed 12–7–09; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA–2008–0136, Notice No. 1]

RIN 2130–ZA02

Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents for Calendar Year 2010

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule increases the rail equipment accident/incident reporting threshold from $8,900 to $9,200 for certain railroad accidents/incidents involving property damage that occur during calendar year 2010. This action is needed to ensure that FRA's reporting requirements reflect cost increases that have occurred since the reporting threshold was last computed in December of 2008.

DATES: This regulation is effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Arnel B. Rivera, Staff Director, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25, West Building 3rd Floor, Room W33–306, 1200 New Jersey Ave., SE., Washington, DC 20590 (telephone 202–493–1331); or Gahan Christenson, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–204, 1200 New Jersey Ave., SE., Washington, DC 20590 (telephone 202–493–1381).

SUPPLEMENTARY INFORMATION:

Background

A ''rail equipment accident/incident'' is a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that results in damages to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material, greater than the reporting threshold for the year in which the event occurs. 49 CFR 225.19(c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19(b) and (c). As revised, effective in 1997, paragraphs (c) and (e) of 49 CFR 225.19 provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted, if necessary, every year in accordance with the procedures outlined in appendix B to part 225 to reflect any cost increases or decreases.

New Reporting Threshold

Approximately one year has passed since the rail equipment accident/incident reporting threshold was revised. 73 FR 78657 (December 23, 2008). Consequently, FRA has recalculated the threshold, as required by § 225.19(c), based on increased costs for labor and increased costs for equipment. FRA has determined that the current reporting threshold of $8,900, which applies to rail equipment accidents/incidents that occur during calendar year 2009, should increase by $300 to $9,200 for equipment accidents/incidents occurring during calendar year 2010, effective January 1, 2010. The specific inputs to the equation set forth in appendix B (*i.e.,* Tnew = Tprior * [1 + 0.4(Wnew − Wprior)/Wprior + 0.6(Enew − Eprior)/100]) to part 225 are:

Tprior	Wnew	Wprior	Enew	Eprior
$8,900	$24.04379	$22.86094	182.03333	180.16667

Where: Tnew = New threshold; *Tprior* = Prior threshold (with reference to the threshold, ''prior'' refers to the previous threshold rounded to the nearest $100, as reported in the **Federal Register**); *Wnew* = New average hourly wage rate, in dollars; *Wprior* = Prior average hourly wage rate, in dollars; *Enew* = New equipment average PPI value; *Eprior* = Prior equipment average PPI value. Using the above figures, the calculated new threshold, (Tnew) is $9,183.88, which is rounded to the nearest $100 for a final new reporting threshold of $9,200.

Notice and Comment Procedures and Effective Date

In this rule, FRA has recalculated the monetary reporting threshold based on the formula discussed in detail and adopted, after notice and comment, in the final rule published December 20, 2005, 70 FR 75414. FRA has found that both the current cost data inserted into this pre-existing formula and the original cost data that they replace were obtained from reliable Federal government sources. FRA has found that this rule imposes no additional burden on any person, but rather provides a benefit by permitting the valid comparison of accident data over time. Accordingly, finding that notice and comment procedures are either impracticable, unnecessary, or contrary to the public interest, FRA is proceeding directly to the final rule.

FRA regularly recalculates the monetary reporting threshold using a pre-existing formula near the end of each calendar year. Therefore, any person affected by this rule anticipates the on-going adjustment of the threshold and has reasonable time to make any minor changes necessary to come into compliance with the regulations. FRA attempts to use the most recent data available to calculate the updated reporting threshold prior to the next calendar year. FRA has found that issuing the rule in December of each calendar year and making the rule effective on January 1, of the next year, allows FRA to use the most up-to-date data when calculating the reporting threshold and to compile data that accurately reflects rising wages and equipment costs. As such, FRA has

found that it has good cause to make the effective date January 1, 2010.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034 (Feb. 26, 1979)).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has issued a final policy that formally establishes ''small entities'' as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.*

About 696 of the approximately 731 railroads in the United States are considered small entities by FRA. FRA certifies that this final rule will have no significant economic impact on a substantial number of small entities. To the extent that this rule has any impact on small entities, the impact will be neutral or insignificant. The frequency of rail equipment accidents/incidents, and therefore also the frequency of required reporting, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller. Small railroads may go for months at a time without having a reportable occurrence of any type, and even longer without having a rail equipment accident/incident. For example, current FRA data indicate that 3,266 rail equipment accidents/incidents were reported in 2005, with small railroads reporting 348 of them. In 2006, 2,990 rail equipment accidents/incidents were reported, and small railroads reported 374 of them. Data for 2007 show that 2,685 rail equipment accidents/incidents were reported, with small railroads reporting 359 of them. Data for 2008 show that 2,448 rail equipment accidents/incidents were reported, with small railroads reporting 291 of them. On average for those four calendar years, small railroads reported about 12% (ranging from 11% to 13%) of the total number of rail equipment accidents/incidents. FRA notes that these data are accurate as of the date of issuance of this final rule, and are subject to minor changes due to additional reporting. Absent this rulemaking (*i.e.,* any increase in the monetary reporting threshold), the number of reportable accidents/incidents would increase, as keeping the 2009 threshold in place would not allow it to keep pace with the increasing dollar amounts of wages and rail equipment repair costs. Therefore, this rule will be neutral in effect. Increasing the reporting threshold will slightly decrease the recordkeeping burden for railroads over time. Any recordkeeping burden will not be significant and will affect the large railroads more than the small entities, due to the higher proportion of reportable rail equipment accidents/incidents experienced by large entities.

Paperwork Reduction Act

There are no new information collection requirements associated with this final rule. Therefore, no estimate of a public reporting burden is required.

Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide[] to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *.'' This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in the Executive Order 13132. Accordingly, FRA has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism assessment. Accordingly, a federalism assessment has not been prepared.

Environmental Impact

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of [$141,300,000 or more (as adjusted for inflation)] in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and Tribal governments and the private sector. The final rule will not result in the expenditure, in the aggregate, of $141,300,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement

of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: That (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

Privacy Act

Anyone is able to search the electronic form of all our comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

■ In consideration of the foregoing, FRA amends part 225 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 225—[AMENDED]

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Amend § 225.19 by revising the first sentence of paragraph (c) and revising paragraph (e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(c) *Group II—Rail equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (*i.e.,* $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007, $8,500 for calendar year 2008, $8,900 for calendar year 2009 and $9,200 for calendar year 2010) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * *

* * * * *

(e) The reporting threshold is $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007, $8,500 for calendar year 2008, $8,900 for calendar year 2009 and $9,200 for calendar year 2010. The procedure for determining the reporting threshold for calendar years 2006 and beyond appears as paragraphs 1–8 of appendix B to part 225.

* * * * *

Issued in Washington, DC, on December 4, 2009.

Joseph C. Szabo,

Administrator.

[FR Doc. E9–29476 Filed 12–9–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 665

[Docket No. 080225267–91393–03]

RIN 0648–AW49

International Fisheries Regulations; Fisheries in the Western Pacific; Pelagic Fisheries; Hawaii-based Shallow-set Longline Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule removes the annual limit on the number of fishing gear deployments (sets) for the Hawaii-based pelagic shallow-set longline fishery, and increases the annual number of allowable incidental interactions that occur between the fishery and loggerhead sea turtles. The final rule optimizes yield from the fishery without jeopardizing the continued existence of sea turtles and other protected resources. This final rule also makes several administrative clarifications to the regulations.

DATES: This final rule is effective January 11, 2010.

ADDRESSES: The Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FMP) and Amendment 18, including a final supplemental environmental impact statement (SEIS), are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: Adam Bailey, Sustainable Fisheries Division, NMFS PIR, 808–944–2248.

SUPPLEMENTARY INFORMATION: This final rule is also accessible at *www.gpoaccess.gov/fr.*

Pelagic fisheries in the U.S. western Pacific are managed under the Pelagics FMP, developed by the Council and approved and implemented by NMFS. The Council submitted Amendment 18 and draft regulations to NMFS for review under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 18 was approved by the Secretary of Commerce on June 17, 2009. This final rule implements the management provisions in Amendment 18, and makes several housekeeping changes to the pelagic fishing regulations that are not related to Amendment 18.

This final rule optimizes the U.S. harvest of swordfish and other fish species, without jeopardizing the continued existence and recovery of threatened and endangered sea turtles and other protected species. The final rule relieves the burden on fishermen of providing written notice each year to obtain shallow-set certificates, and reduces the administrative burden of processing and issuing certificate requests, and monitoring certificate usage. This will allow an increase in fishing effort to optimize the harvest of North Pacific swordfish and other fish species, but will not exceed maximum sustainable yields.

Under this final rule, the Hawaii longline fleet may not interact with (hook or entangle) more than 46 loggerhead sea turtles or 16 leatherback sea turtles each year. These sea turtle interaction limits do not represent the upper limit of interactions that would avoid jeopardizing the continued existence of sea turtles, but are the annual number of sea turtle interactions

anticipated to occur in the Hawaii shallow-set fishery. The interaction limits allow for growth of the fishery without appreciably reducing the likelihood of both the survival and recovery of the loggerhead and leatherback sea turtles. The final rule is not likely to cause significant adverse effects to marine mammals, migratory birds, essential fish habitat, or habitat areas of particular concern.

All other measures that are currently applicable to the fishery remain unchanged, including but not limited to, limited access, vessel and gear marking requirements, vessel length restrictions, Federal catch and effort logbooks, 100–percent observer coverage, large longline restricted areas around the Hawaiian Archipelago, vessel monitoring system (VMS), annual protected species workshops, and the use of sea turtle, seabird, and marine mammal handling and mitigation gear and techniques. The fishery will be closed for the remainder of the calendar year if either interaction limit is reached. A range of management alternatives was identified during the development of this action, as described in the summary of the SEIS in the Classification section of the proposed rule published on June 19, 2009 (74 FR 29158).

This final rule removes the annual limits on shallow-set fishing effort and the requirements of the shallow-set certificate program found at 50 CFR 665.33, the related prohibitions at 50 CFR 665.22, and the definition of a shallow-set certificate found at 50 CFR 665.12. The annual limits for sea turtle interactions are revised in 50 CFR 665.33. Also in that section, the Regional Administrator is required to publish an annual notification in the **Federal Register** of the applicable annual sea turtle interaction limits, and if an interaction limit is exceeded in any one calendar year, the annual limit for that sea turtle species would be adjusted downward the following year by the number of interactions by which the limit was exceeded.

In addition to modifications to the shallow-set effort and turtle interaction measures, this final rule makes several technical clarifications to the longline regulations that are unrelated to Amendment 18. First, this final rule clarifies the technical specifications regarding required circle hooks. In a final rule published on November 15, 2005, NMFS implemented a requirement for Hawaii-based shallow-set longline fishermen to use circle hooks of size 18/0 or larger with an offset of 10 degrees (70 FR 69282). The wording of this requirement was intended to mirror the requirement for Atlantic longline fishing, which require the use of circle hooks with an offset not to exceed 10 degrees (69 FR 40734; July 6, 2004). The November 2005 final rule for the western Pacific shallow-set fishery inadvertently omitted the phrase ''not to exceed.'' This final rule corrects that error. The result is that shallow-set longline fishermen may use hooks with a range of offsets from zero to 10 degrees.

The second technical change to longline regulations clarifies the requirement to carry line clippers, including the design specifications, on vessels registered for use under a Hawaii longline limited access permit. On March 28, 2000, NMFS published a final rule that implemented several measures designed to mitigate injuries to sea turtles by the Hawaii longline pelagic fishery, including requirements to carry and use line clippers, dip nets, and dehookers (65 FR 16347). In a subsequent final rule relating to sea turtle mitigation measures (70 FR 69282, November 15, 2005), the requirements in 50 CFR 665.32 specifically relating to line clippers were inadvertently omitted. This final rule corrects that error. The corrected regulation requires fishermen to carry on board their vessels and use line cutters meeting NMFS design specifications. The final rule also redesignates several paragraphs in 50 CFR 665.32 for organizational clarity.

In the third technical clarification, this final rule removes the text of two regulations that were previously superseded by more stringent regulations. In 50 CFR 665.22, paragraph (gg) prohibits shallow-set longline fishing from a vessel registered for use under a Hawaii longline limited access permit north of the Equator with hooks other than circle hooks. That paragraph was superseded by paragraph (jj), which prohibits such fishing from a vessel registered under any western Pacific longline permit. Similarly, paragraph (hh) prohibits shallow-set longline fishing from a vessel registered for use under a Hawaii longline limited access permit north of the Equator with bait other than mackerel-type bait. That paragraph was superseded by paragraph (kk), which prohibits such fishing from a vessel registered for use under any western Pacific longline permit. Thus, paragraphs (gg) and (hh) are removed.

A fourth technical clarification was made to the high seas fishing regulations to correct a reference to western Pacific domestic fishing regulations. In 50 CFR 300, paragraph (1)(v) incorrectly refers to Pacific longline reporting requirements at 50 CFR 660.14. This reference was corrected to refer to the requirements at 50 CFR 665.14.

Additional background information on this final rule may be found in the preamble to the proposed rule, and is not repeated here.

Comments and Responses

On June 19, 2009, NMFS published a proposed rule and request for public comment (74 FR 29158). The public comment period ended on August 3, 2009. NMFS received public comments, and responds as follows (note that references cited may be found in Amendment 18 and the final supplemental environmental impact statement (FSEIS), and are not repeated here):

Comment 1: Expansion of the Hawaii-based shallow-set longline fishery would violate the Endangered Species Act (ESA) and would contribute to the extinction of sea turtles.

Response: This rule is consistent with the ESA. The ESA requires each Federal agency to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. Federal regulations implementing the ESA (50 CFR 402; July 3, 1986) define the term ''jeopardize the continued existence of'' to mean engaging in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

NMFS is required under ESA section 7 to consult on Federal actions affecting ESA-listed marine species. On October 15, 2008, NMFS issued a Biological Opinion (2008 BiOp) to determine whether removing the annual limit on fishing effort of the Hawaii-based shallow-set longline fishery (the Federal action) is likely to jeopardize the continued existence of any ESA-listed species. The 2008 BiOp, which utilized the best available scientific information, analyzed the effects of the continued operation of the Hawaii-based shallow-set longline fishery based on an effort level of 5,550 sets annually, or over 4.6 million hooks. The opinion concluded that the action is not likely to jeopardize the continued existence of any ESA-listed species. Critical habitat has not been designated in the action area, so no critical habitat would be affected by the action. The action does not jeopardize the continued existence of any ESA-listed species, and therefore, does not violate ESA, nor would it contribute to

the extinction of any sea turtle species. The 2008 BiOp is available on the NMFS Pacific Islands Regional Office website.

Comment 2: Given declines to both leatherbacks and loggerheads in the Pacific, increasing sea turtle interaction limits is inappropriate. The fact that the existing bycatch limit of 17 loggerheads does not approach the ''upper limit'' of a jeopardy determination is not justification for pushing takes to a point that more closely approaches jeopardy to the species. NMFS has proposed to increase the turtle mortality to levels that now more closely approach jeopardy. The ESA requires NMFS to ensure that the sea turtle populations not only survive but continue to recover; therefore, NMFS should take the most risk-averse approach to managing interacting fisheries.

Response: See response to Comment 1 for ESA requirements. The ESA allows for the incidental taking of listed species under certain conditions. The 2008 BiOp concluded that removing the annual limit on fishing effort is not likely to jeopardize the continued existence or recovery of any ESA-listed species. While this action could potentially result in the incidental take of individuals of several listed species through incidental hooking or entanglement, Section 7 of the ESA allows for taking of ESA-listed species that is incidental to, and not intended as part of an action, if the action is not likely to jeopardize the species, and such taking is in compliance with an incidental take statement (ITS) in a Biological Opinion.

In the 2008 BiOp, NMFS estimated the Hawaii shallow-set longline fishery could make 2,120 to 5,550 sets annually. Based on sea turtle interaction rates observed in the fishery from 2004 to 2008, NMFS further estimated 19 leatherback and 46 loggerhead turtle interactions could occur as the fishery increases. The 2008 BiOp concluded that the estimated number of interactions with leatherback and loggerhead sea turtles is not likely to jeopardize the continued existence (including survival and recovery) of these species.

The ITS in the 2008 BiOp requires NMFS to (1) establish annual interaction limits for loggerhead and leatherback turtles such that the fishery is closed when either interaction limit is reached, (2) implement a 3–year ITS to trigger reinitiating consultation, (3) collect data on the capture, injury, and mortality of sea turtles and life-history information, (4) require that sea turtles captured alive be released from fishing gear in a manner that minimizes injury, (5) require comatose or lethargic sea turtles to be retained on board, handled, resuscitated, and released according to established procedures, and (6) require sea turtles that are dead when brought aboard a vessel, or that do not resuscitate, be disposed of at sea unless NMFS requests retention of the carcass for sea turtle research.

The ITS established the annual interaction limit for loggerhead turtles at 46. Out of an abundance of caution due to concerns about the likely decline of the Western Pacific leatherback population, the annual interaction limit for leatherback sea turtles was retained at the current level of 16. These annual interaction limits are not intended to represent the upper limit of interactions that would avoid jeopardizing the continued existence of sea turtles, but instead are the annual number of sea turtle interactions anticipated to occur in this fishery. Although the annual sea turtle interaction limits are 46 and 16, for loggerhead and leatherback turtles, respectively, the predicted mortalities (based on 100 percent observer data) at the interaction limits would be three adult female loggerhead and two adult female leatherback sea turtles, the effects of which would be indistinguishable from natural mortality. It is important to note that continued comprehensive observer coverage allows for immediate observations and response (i.e., fishery closure) to turtle interactions exceeding established limits. Proven sea turtle mitigation measures, such as large circle hooks and mackerel-type bait, as well as other regulatory measures, will remain in effect. Also see responses to Comments 46 and 61 regarding the 2008 BiOp analyses and no jeopardy determination.

Comment 3: Managers should be developing measures to further reduce loggerhead sea turtle take in U.S. fisheries, not increase them.

Response: NMFS and the Council, working with the Hawaii longline fleet, continue to make significant progress in reducing sea turtle take in the Hawaii-based shallow-set longline fishery. Development and implementation of sea turtle mitigation measures in 2004, such as requiring the use of circle hooks and mackerel-type bait has reduced sea turtle interaction rates by approximately 90 percent for loggerheads and 83 percent for leatherbacks compared to 1994–2002 when the fishery operated without these requirements.

NMFS continues to support the development and research of improved bycatch mitigation measures and new technologies such as TurtleWatch, a mapping product which provides up-to-date information about the thermal habitat of loggerhead sea turtles in the Pacific that fishermen can use to deploy their fishing gear in areas where loggerheads are less likely to occur, and ultimately decrease the number of fishery interactions.

Comment 4: The post-hooking mortality rates of 20.5 percent for loggerheads and 22.9 percent for leatherbacks may be seriously underestimated for the Hawaii-based shallow set fishery, as turtles released with substantial amounts of gear attached are more likely to perish from line ingestion, strangulation, or as a result of amputation. Observers reported that nearly half the leatherbacks encountered were externally hooked and released with the hook and substantial amounts of line still attached.

Response: The post-hooking mortality rates used in the effects analysis, as described in Section 3.3.1.7.1 of the FSEIS, were derived from a NMFS workshop (Ryder et al. 2006) that developed criteria for assigning post-hooking mortality values based upon identified variables, including hook placement, degree of entanglement, and physical condition. Recent NMFS research using satellite tags on loggerhead turtles suggests that the loggerhead post-release mortality rate may be approximately half of those used in the effects analysis of the FSEIS, and may only be about 9.5 percent of all interactions. Given this study's wide confidence intervals, which overlapped the post-hooking mortality values used in the effects analysis of the FSEIS, NMFS relied on a conservative and established approach for applying its guidance on sea turtle post-hooking mortality rates in developing the FSEIS. Therefore, the mortality rates do not appear to be seriously underestimated.

NOAA is committed to investigating potential violations of ESA provisions related to sea turtles and will take appropriate enforcement action where warranted by the facts. NMFS continues to have confidence in the accuracy of observer data, and assigns turtle post-hooking mortality values in accordance with the observers' accounts using published criteria in Ryder et al. (2006). Fishermen are instructed annually at required protected species workshops to remove as much fishing gear as possible from any incidentally caught sea turtle, marine mammal, or seabird to reduce the likelihood of further injury or mortality.

Comment 5: NMFS should motivate fishermen to keep their interactions low by maintaining the current cap. The motivational value of a low cap was

demonstrated in 2007 when fishermen first ignored the TurtleWatch product, but then used it effectively as the fleet approached the cap. In their review of the effectiveness of circle hooks in the Hawaii-based swordfish shallow set fishery, Gilman et al. (2007) suggest that turtles aggregate at foraging grounds (and are often caught in clusters) and recommend measures to avoid real-time turtle hot spots to further reduce turtle interactions. Tripling the cap will undermine efforts to keep interactions low and remove the motivation to fishermen to safeguard these species.

Response: Limiting the annual interaction limit for loggerhead turtles to 46 does not undermine efforts to minimize sea turtle interactions in this fishery, nor does it remove the motivation of fishermen to safeguard these species. It is expected that fishermen will continue to keep interactions with protected species to a minimum to continue fishing sustainably and prevent a fishery closure, which is economically harmful to fishery participants and disrupts markets that rely on Hawaii swordfish. Annual interaction limits are based on 2004–08 interaction rates, and estimated post-hooking mortality rates of loggerheads and leatherbacks in the Hawaii shallow-set longline fishery. Additionally, the leatherback sea turtle interaction limit will remain at 16, and could potentially be a greater limiting factor than loggerheads.

Consistent with the 2008 BiOp, NMFS has recommended the continuation of the TurtleWatch program. Additional descriptive information on this program and other NMFS sea turtle programs and research is in Section 4.4.2.1.2 of the FSEIS. There is no evidence that fishermen used TurtleWatch to avoid sea turtle interactions in 2007.

Proven turtle mitigation measures and hard caps contained in the preferred alternative provide protection to sea turtles. NMFS continues to study sea turtles, including research on their preferred habitats and fishery interactions, and will continue to research effective management options.

Comment 6: The final rule would increase the annual discard mortality by 133 percent.

Response: As described in the FSEIS, fish bycatch in the Hawaii-based shallow-set longline fishery is estimated to be limited to 6–7 percent of the annual catch. Since no other significant changes are occurring in the fishery, there is no indication that removing the annual set limit would increase the mortality rates of any bycatch species. No increased mortality of protected species should occur as proven mitigation gear and techniques will continue to be required in the fishery.

Comment 7: Increasing the Hawaii shallow-set longline fishery would increase fishing pressure on swordfish, and thus, would violate the Magnuson-Stevens Act as the act requires fisheries managers to end overfishing and safeguard swordfish at present quotas.

Response: North Pacific swordfish are managed under the Western Pacific Pelagics FMP and there are no quotas or catch limits for swordfish. The most recent applicable stock assessments for North Pacific swordfish indicate that this stock is not overfished or subject to overfishing, and is not approaching either condition. Kleiber and Yokawa (2004) provided the stock assessment for North Pacific swordfish, and estimated the MSY at 22,284 mt. Results of this assessment suggest that the population in recent years is well above 50 percent of the unexploited biomass, implying that swordfish are healthy and not over-exploited, and are relatively stable at the current levels of fishing effort. Current domestic and foreign harvests of this stock amount to approximately 14,500 mt, roughly 65 percent of the MSY. Wang et al. (2007) found that the spawning stock biomass of swordfish in the North Pacific is currently at a fairly high fraction of its initial level and that the spawning stock biomass-per-recruit under current exploitation rates is higher than that corresponding to the maximum sustainable yield. Wang et al. (2007) also note that recent stock assessments of swordfish in the North Pacific indicate that this stock is not over-exploited and that it has been relatively stable at current levels of exploitation. The Hawaii-based shallow-set longline fishery's projected harvest of approximately 4,808 mt if 5,500 sets are utilized will not overfish or contribute to overfishing of swordfish. Furthermore, a 2009 International Scientific Committee swordfish stock assessment concluded that western and central Pacific Ocean (WCPO) and eastern Pacific Ocean (EPO) stocks of swordfish are healthy and well above the level required to sustain recent catches.

Comment 8: Many target and non-target species harvested by the Hawaii-based longline fishery, including bigeye and yellowfin tuna, are either overfished or approaching an overfished condition, or lack sufficient data to determine whether their populations are healthy and sustainable. Allowing the fishery to expand would violate Federal laws and international agreements, which require fishery managers to end overfishing immediately and rebuild overfished populations.

Response: No fish stock targeted or incidentally caught by the Hawaii shallow-set fishery is overfished, or approaching that condition. The Hawaii fleet targets North Pacific swordfish which have not been found by NMFS or any international management organizations to be overfished or subject to overfishing, or approaching either condition. For information about the maximum sustainable yield for North Pacific swordfish, see response to Comment 7.

Pacific-wide bigeye tuna was determined in 2004 by NMFS to be subject to overfishing, but not overfished (69 FR 78397, December 30, 2004). In that determination, NMFS recognized that Pacific bigeye tuna occur in the waters of multiple nations and on the high seas, and is fished by the fleets of other nations in addition to those of the U.S.A. Multilateral action is essential to ensure that overfishing of bigeye tuna in the Pacific Ocean ends, although U.S. fisheries comprise a very small portion of Pacific-wide bigeye tuna harvests (less than 3 percent in 2004). In 2007, NMFS approved the Council's recommendation to develop, support and implement recommendations made by international regional fishery management organizations (RFMO, such as the Western and Central Pacific Fisheries Commission (WCPFC) and the Inter-American Tropical Tuna Commission (IATTC)) to address overfishing of bigeye tuna.

Furthermore, the final rule will likely increase participation in the shallow-set fleet that targets swordfish, thereby shifting effort away from bigeye and yellowfin tuna that are targeted by the deep-set fleet. (The Hawaii longline fisheries are limited to 164 vessels, combined.) Pursuant to the Western and Central Pacific Fisheries Convention Implementation Act, NMFS and the Council have been working with the WCPFC to address the bigeye tuna overfishing issue on an international scale. The WCPFC adopted Conservation and Management Measure (CMM) 2008–01 designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors. NMFS implemented a final rule (74 FR 38544, August 4, 2009) and has proposed rulemaking (74 FR 32521, July 8, 2009) to implement CMM–2008–01 for 2009 to reduce the bigeye tuna fishing mortality rate in the WCPO. The highest expected annual fishing mortality of bigeye tuna by the Hawaii shallow-set fishery using 5,500 sets is 0.29 percent of estimated

maximum sustainable yield for bigeye tuna in the WCPO.

WCPO yellowfin is no longer considered to be subject to overfishing, based on recent stock assessments. In 2004, U.S. fisheries were estimated to be responsible for less than four percent of all WCPO yellowfin harvests, with the majority of these made by tuna purse seine vessels. A recent IATTC resolution (C–09–01) is applicable in 2009–11 for all large U.S. longline vessels (over 24 meters length overall), that fish for yellowfin, bigeye and skipjack tunas in the EPO. In reference to the U.S.A., they shall ensure that their total annual longline catches of bigeye tuna not exceed 500 metric tons. NMFS has implemented (74 FR 38544, August 4, 2009) the CMM for 2009 to prevent increases in the yellowfin tuna mortality rate in the WCPO. For yellowfin tuna, the highest expected annual fishing mortality from 5,500 sets is approximately 0.004 percent of WCPO yellowfin MSY. Neither bigeye nor yellowfin tuna estimates of potential fishing mortality from 5,500 sets include percentages of MSY estimates from the EPO. That is, the estimates of catch compared to the MSY are calculated from fishing within the WCPO only (150° W or further west). The fishery does occasionally operate east of the 150° W longitude, separating the two RFMO jurisdictions (WCPFC and IATTC). The fishery would likely catch a small unknown percentage of their annual catch of bigeye and yellowfin tuna from the EPO, thereby reducing the already low percentages of MSY from the WCPO.

Comment 9: The removal of the shallow-set fishery effort limit, increased pressure on overfished and data-poor fish species, and increased take of protected species are wholly unjustified.

Response: See the responses to Comments 1, 2, 7, and 8 for justification of the sustainable increase of Hawaii-based shallow-set longline swordfish fishery.

Comment 10: Since the annual set limit has never been reached, there currently are unused set limit allocations available to any fishermen who wish to use them. As such, there is no immediate need to open the swordfish fishery, much less propose an unlimited effort, and try to encourage fishermen to switch between target fisheries. If the tuna fishermen wish to move into the swordfish fishery now, they can.

Response: Hawaii longline permit holders who need shallow-set certificates for the next calendar year must notify the Pacific Islands Regional Office (PIRO) of their interest by November 1 of the fishing year. Each permit holder meeting the November 1 deadline receives one share for each Hawaii longline permit they hold. The 2,120 certificates are divided by the total number of shares and rounded down to the nearest whole number. The resulting number is the number of certificates issued to each share.

Shallow-set certificates are freely transferable to another Hawaii longline permit holder; however, certificates are typically sold by fishermen that do not participate in the shallow-set fishery, thus adding another layer of complexity for shallow-set fishermen to obtain an economically feasible number of certificates. While the current annual set limit of 2,120 has not been reached since the program's inception in 2004, this limit does not promote, on a continuing basis, optimal yield from the swordfish fishery in accordance with the Magnuson-Stevens Act's National Standard 1. Accordingly, the continuation of the set certificate program may be expected to unnecessarily limit fishing effort.

In addition, the set certificate program is an unnecessary administrative burden and cost to taxpayers. The final rule will enable the fishery to achieve optimum yield, while at the same time reducing costs and avoiding jeopardy to ESA-listed species. Current fishing effort limits and associated set certificates have been used to indirectly control turtle interactions. The use of interaction limits for turtles, in conjunction with other existing regulatory measures, have proven to be effective in reducing interactions. NMFS will continue to monitor the fishery with 100 percent observer coverage and is confident that this will provide complete fishery information.

Comment 11: Proposing to close a fishery based solely on endangered species interactions, with no limit on sets or effort (in other words, without having anything to do with the fish stock), is no way to manage a fishery.

Response: This fishery is being managed with many other measures, in addition to limits on sea turtle interactions. Moreover, closing a regulated fishery, like the Hawaii-based shallow-set longline fishery, based on threatened and endangered species interactions is prudent and reasonable given the intent of Amendment 18 and the final rule to achieve optimal yield from the fishery. The shallow-set longline fishery will continue to be monitored and assessed for its impact on pelagic management unit species.

The Magnuson-Stevens Act broadly gives the Councils and NMFS the authority to undertake appropriate measures to control bycatch. National Standard 9 requires that the Councils and NMFS develop conservation and management measures which ''shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.'' Under the Magnuson-Stevens Act, turtles are included in the definition of bycatch. In addition, in the recent Magnuson-Stevens Act reauthorization, Congress added an extensive provision creating a Bycatch Reducton Engineering Program which specifically authorized Councils and NMFS to take action to ''incorporate bycatch into quotas, including the establishment of collective or individual bycatch quotas.'' As a result, a number of fisheries are constrained through bycatch caps. The Magnuson-Stevens Act action establishing a bycatch cap often involves setting a limit on the specific number of animals from a prohibited species that may incidentally be caught (although not retained) before fishing operations must cease. Therefore, it is a permissible action under the Magnuson-Stevens Act to establish a limit on the number of turtles (or any other species) that can be caught as bycatch in a fishery.

Sustainable harvests of North Pacific swordfish are possible up to an MSY of about 22,284 mt. The current annual swordfish catch by the Hawaii-based shallow-set fishery ranges from 850 to 1,637 mt, (1,861,391 to 3,602,339 lb) and the amount of effort to catch 7,784 mt of additional swordfish would be about 9,925 total sets per year if the Hawaii longline fishery were to fish the North Pacific swordfish stock up to the level of the MSY. The sea turtle interactions limits are set to protect those stocks from being jeopardized. The fishery would close if either of these interaction limits were reached.

Comment 12: The impact analysis of the proposed action seems to down-play risks to a variety of species including false killer whales, humpback whales, and sea turtles. The current mortality limits were set in face of an acknowledged lack of information on sea turtle stock structure, population estimates and bycatch in non-US fisheries.

Response: In the 2008 BiOp, NMFS determined that the level of incidental take anticipated from the final rule is not likely to jeopardize the humpback whale, loggerhead turtle, leatherback turtle, green turtle, olive ridley turtle, or hawksbill turtle. While the final rule is not expected to jeopardize leatherback turtles, NMFS is concerned about the decline of the Western Pacific

leatherback population. The lack of information on this population means that it could be worse off than it appears. For these reasons, a cautionary approach is warranted, and NMFS did not propose increasing the annual interaction limit for leatherback turtles. That limit remains at the current limit of 16, rather than the expected incidental take of 19 leatherbacks.

Comment 13: NMFS should adopt a precautionary approach and support the ''no action'' alternative.

Response: Amendment 18 was approved by the Secretary of Commerce on June 17, 2009. The actions approved in the Amendment remove fishing effort limits, and increase the annual loggerhead sea turtle interaction limit to 46 interactions (the current limit of 16 interactions with leatherback sea turtles remains unchanged), and discontinue the set certificate program.

Interaction limits for the shallow-set longline fishery were established using the best available science, which included data from 100 percent observer coverage since 2004. Fishery interaction and estimated mortality rates were used to determine the annual limits on the fishery. Where information was not as readily available, a more conservative approach was utilized. For instance, the 2008 BiOp noted this in relation to the proposed increase in the leatherback sea turtle interaction limit. While the proposed increase to 19 annual interactions did not reach a jeopardy threshold, due to a lack of information and the population status of Western Pacific leatherbacks at known nesting beaches, a more conservative measure is implemented to restrict the allowable annual interactions to 16 due to a lack of information and the population status of Western Pacific leatherbacks.

Comment 14: Increasing the loggerhead sea turtle interaction limit from 17 to 46 would violate the requirement of the Magnuson-Stevens Act to minimize bycatch to the extent practicable.

Response: National Standard 9 requires conservation and management measures, to the extent practicable, to minimize bycatch and to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. The use of circle hooks and mackerel-type bait in Hawaii's shallow-set longline fishery has reduced sea turtle interaction rates by approximately 90 percent for loggerheads and 83 percent for leatherbacks compared to 1994–2002, when the fishery was operating without these requirements (Gilman et al. 2007). Gilman et al. (2007) also showed that the incidents of serious injury, e.g., the number of deeply-hooked sea turtles have been greatly reduced. Additionally, handling and release requirements are used to reduce sea turtle mortality. These requirements will not change as a result of this final rule. Bycatch of ESA-listed humpback whales, loggerhead sea turtles, leatherback sea turtles, olive ridley sea turtles, green sea turtles, and hawksbill sea turtles is not likely to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or their distribution.

Comment 15: NMFS should maintain 100 percent observer coverage of the shallow-set longline fleet and continue to improve the real-time reporting of marine mammal and sea turtle interactions to ensure that interaction limits are not exceeded.

Response: Existing management measures will be maintained, including 100 percent observer coverage and real-time reporting of sea turtle interactions. Each observer is issued a satellite telephone, and may also use the vessel's marine radio to ensure timely reporting of all sea turtle interactions. NMFS has established electronic logbook reporting mechanisms to enable timely reporting for the Hawaii pelagic longline fleet. The PIRO Observer Program is actively preparing for the potential shallow-set fishery expansion, and subsequent requirement of additional observer coverage.

Comment 16: Expansion of the Hawaii shallow-set longline fishery would violate the Marine Mammal Protection Act (MMPA), because NMFS has not proposed or issued a decision and related authorizations for incidental take of humpback whales.

Response: A marine mammal species that is listed as threatened or endangered under the ESA is, by definition, also considered strategic under the MMPA. The ESA allows taking of threatened and endangered marine mammals only if authorized by section 101(a)(5) of the MMPA. That is, the incidental taking of ESA-listed marine mammals must first be authorized under section 101(a)(5)(E) of the MMPA before it can be authorized by the ESA. Because incidental take of humpback whales has not been authorized under the MMPA for the action, the 2008 BiOp could not authorize incidental take of this species. However, NMFS has initiated the humpback whale MMPA 101(a)(5)(E) authorization process for the Hawaii-based longline shallow-set fishery.

Using annual interaction rates, the 2008 BiOp predicted this action would result in up to three interactions between humpback whales and the shallow-set fishery each year. Based on mortality estimates used in the 2008 BiOp, Chapter 4 of the FSEIS was revised to include an estimated 25 percent post-interaction mortality rate, resulting in up to one humpback whale mortality every year. As discussed in the 2008 BiOp, NMFS does not expect this to jeopardize the continued existence or recovery of the North Pacific humpback whale population. NMFS is in the final determination process on whether or not U.S. Federal fisheries have a negligible impact on the North Pacific Stock of humpback whales. This stock is currently estimated at 18,000 animals and available information indicates that it is increasing by at least 6.8 percent per year as result of international and Federal protections.

Comment 17: There is no exclusion in the ESA for beneficial conservation measures that offset fisheries incidental take, which is contrary to the ESA and the Administrative Procedure Act, and a misguided disincentive for fisheries to engage in beneficial conservation activities.

Response: While the Council's conservation projects are not a part of the current Federal action, in evaluating the status of species affected by an action under ESA Section 7 consultation, NMFS considers the beneficial impacts of conservation activities that may improve species status. Such measures must be reasonably likely to occur to make a quantitative or qualitative assessment. NMFS also considers conservation measures that are part of a proposed action in its effects analyses in Section 7 consultations. The Federal fishery action and the Council's conservation measures are two different actions with regard to ESA Section 7. For example, the issuance of Federal fishing permits for Hawaii-based longline fishing is a distinct action, separate from granting funds to support turtle conservation measures in Japan, Mexico, and Indonesia. The action areas for the conservation measures and for longline fishing are geographically separate.

Comment 18: NMFS implemented a reasonable and prudent measure (RPM) that causes more than a minor change in the proposed action (i.e., that reduces authorized leatherback sea turtle takes from 19 to 16 annually).

Response: The ESA Section 7 regulations define reasonable and prudent measures as those actions necessary or appropriate to minimize the impacts of incidental take resulting from a no-jeopardy action (402.02), and stipulate that a reasonable and prudent

measure cannot alter the basic design, location, scope, duration, or timing of the action and involve only minor changes (402.14). Because of the apparently declining population of Western Pacific leatherback turtles, NMFS exercised its discretion to minimize incidental take of this species associated with the action. The reduction in the proposed leatherback take from 19 to 16 annually does not alter the basic design, location, scope, duration, or timing of the action.

Comment 19: Would the associated take permits and authorizations under the MMPA and ESA change with implementation of this rule?

Response: MMPA take authorizations will not change as a result of the final rule, and no new permits or authorizations will be required. The Marine Mammal Authorization Program (MMAP) participation is part of the Hawaii longline limited entry permit issuance, and qualifies for commercial take exemption. The action was analyzed for potential impact to ESA-listed species. The 2008 BiOp issued on the action determined there would be no jeopardy to the survival and recovery of any ESA-listed species.

Comment 20: Existing gear and bait technologies employed in the Hawaii shallow-set longline fishery, which have been proven successful in Atlantic experiments, have not yet been proven enough in this fishery to warrant a dramatic increase in potential endangered species takes and unlimited effort that this proposal entails.

Response: The Hawaii-based shallow-set longline fishery began in late 2004 to test the effectiveness in the Pacific of a combination of circle hooks and mackerel-type bait, which successfully reduced interactions with leatherback and loggerhead sea turtles in the Atlantic. This resulted in a data set of 4,638 shallow sets (with 100 percent observer coverage).

To test the gear combination's effectiveness, fishing effort in the model Hawaii fishery was limited to 2,120 sets, roughly 50 percent of the 1994–99 annual average number of sets. As an additional safeguard, an annual limit was implemented on the number of unintended interactions with sea turtles that could occur in the shallow-set fishery. The limit was calculated by multiplying the number of sets, 2,120, by sea turtle interaction rates in the Atlantic experiments. The fishery would be closed for the remainder of the calendar year if either interaction limit was reached. Since the fishery reopened in 2004, sea turtle interactions in the Hawaii shallow-set longline fishery have been successfully reduced by a combined 89 percent compared to 1994–2002 when the fishery was operating without these requirements. Furthermore, since 2004, all sea turtles that have interacted with the Hawaii-based shallow-set fishery have been released alive.

The best available scientific information indicates that the action, with continuation of existing and effective sea turtle and seabird mitigation measures, and 100 percent observer coverage, will not jeopardize the continued existence and recovery of any protected species populations, or result in overfishing or overfished conditions of any target or non-target stocks. Section 4.0 of the FSEIS includes a description of the analytical methodology used in the analysis. The data used in the analysis are sufficient to present the potential impacts of the alternatives considered. Interaction rates are significantly lower than in the past; however, no single mitigation measure is completely effective. Annual interaction limits provide an additional level of confidence that fishery interactions do not exceed authorized levels.

Comment 21: Should the longline fishery seriously injure or kill a humpback from the Central North Pacific stock of humpback whales, the potential biological removal (PBR) for the SE Alaska portion of the stock will likely be equaled. This is not discussed in the 2008 BiOp, but it should have been.

Response: Discussion of PBR calculations were outside the scope of the effects analysis of the 2008 BiOp because PBR is a construct of the MMPA, not the ESA. Mortality estimates are published in the annual Stock Assessment Report (SAR). The draft 2009 SAR was available for public comment (74 FR 30527, June 26, 2009). In this rule, NMFS cannot assume how additional takes in the Hawaii-based shallow-set longline fishery will affect the PBR levels. The effects analyses in the FSEIS and the 2008 BiOp did quantify the potential number of interactions with humpback whales at the projected maximum number of sets.

Comment 22: There are likely to be adverse impacts from the preferred alternative to either the insular or pelagic stocks of false killer whales, and those impacts appear to be inappropriately minimized. The lack of observed interactions, on which NMFS' conclusion regarding impacts is based, is in part an artifact of low observer coverage and very limited effort; and that effort is now proposed to be dramatically increased. Given the very low PBR levels for these stocks, and the fact that the insular stock appears to be declining and the PBR for the pelagic stock is being exceeded, NMFS' conclusion is incorrect that there is likely to be little impact to these stocks from a dramatic increase in sets and hooks.

Response: The FSEIS impacts analysis included false killer whales using shallow-set fishery data obtained from 100 percent observer coverage. There have been four observed interactions since 1994 and only two observed interactions since the inception of 100 percent observer coverage when the shallow-set fishery was re-opened in 2004. The pelagic false killer whale stock is a strategic stock because of its interaction with the deep-set longline fishery, which is not the subject of this final rule. Also see response to Comment 49 for shallow-set fishery-related marine mammal interactions.

The shallow-set fishery rarely interacts with false killer whales. Based on sighting locations and genetic analysis of tissue samples, the NMFS 2008 SAR applies an insular false killer whale stock boundary corresponding to the 25–75 nm longline prohibited area around the main Hawaiian Islands to recognize the insular false killer whale population as a separate stock for management. Based on the best available scientific information and as described in the SAR, interactions between the Hawaii-based longline fleet (both the shallow-set and deep-set fisheries) and the Hawaii insular population of false killer whales is unlikely in the longline fishing prohibited area around the main Hawaiian Islands.

Comment 23: A major consideration in the future of the North Pacific loggerhead is the reduction in numbers of juvenile foraging populations in Baja California, Mexico, with far fewer animals smaller than 50 cm than have been reported in the past. Continuing declines in juvenile foraging populations in Mexico may be manifesting themselves in the nesting beach data and the population could be declining at a much more rapid rate than the analyses here represent. Cumulative impacts should be considered when determining acceptable interaction levels.

Response: The final rule will not jeopardize the continued existence or recovery of loggerhead populations; authorized interactions with loggerhead (46) and the expected resultant adult female mortalities (up to three per year) cannot be distinguished from the effects of natural mortality. Declines of juvenile loggerheads in Mexico are not exhibited in the Japanese nesting beach data.

Incomplete North Pacific loggerhead nesting beach data from 2008 included in the FSEIS indicate a 55 percent increase in loggerhead nesting as compared to 2007. This information is in Table 19 of the FSEIS. Figure 18 shows the trend in loggerhead nesting, and was added to FSEIS Section 3.3.1.2.1. Nesting trends through 2008, presented by Dr. Yoshimasa Matsuzawa at the Symposium for North Pacific Loggerhead Turtle Conservation in Japan, convened in Kagoshima, Japan, December 7, 2008, indicated a total of 10,847 nests. This is considerably higher than the 7,700 nests that the 2008 BiOp assumed before the nesting season was finished and all data compiled. Publications on the numbers of juvenile age class foraging populations in Mexico are not currently available. The current loggerhead sea turtle population is likely in a better condition than depicted by the analyses.

The Council's ongoing sea turtle conservation projects are important to loggerhead conservation and survival. The 2008 BiOp included the following conservation recommendations for loggerhead sea turtles: (1) continuation of ongoing studies on the ecological, habitat use, and genetics of loggerhead turtles in nearshore waters around Baja California, Mexico, (2) gear mitigation studies for fisheries operating in these waters; (3) implementation of a trans-Pacific international agreement that would include relevant Pacific Rim nations in the conservation and management of sea turtle populations - specifically a Japan-U.S.A.-Mexico agreement for North Pacific loggerhead turtles, and (4) regional partnerships to implement long-term sea turtle conservation and recovery programs for critical nesting, foraging and migratory habitats.

The 2008 BiOp, which was peer-reviewed, examined the preferred alternative under Section 7 of the ESA and relying on the best information available, concluded that the action limiting annual interactions to 46 loggerheads and maintaining the current interaction limit of 16 leatherbacks would not jeopardize the continued existence and recovery of those sea turtle populations. Furthermore, transferred effects from the action will likely benefit global sea turtle populations by reducing domestic consumption of fish harvested from foreign fisheries that do not employ proven turtle mitigation measures.

Comment 24: The final rule would put leatherback turtles at greater risk of capture, because of the vulnerability to declining nesting populations of Western Pacific leatherbacks, as 75 percent of these turtles are concentrated in a few sites in Papua, Indonesia.

Response: Estimates derived from Dutton et al. (2007) suggest that during 1999–2006, two-thirds of the nesting occurred in Papua, Indonesia, most of the remainder occurred in Papua New Guinea and the Solomon Islands, and a small fraction (about 1 percent) occurred in Vanuatu.

The final rule removes the annual limit on fishing effort, thus allowing for optimum yield to be achieved in this fishery. NMFS estimates up to 5,550 sets to be made by the Hawaii shallow-set longline fishery annually. Based on sea turtle interaction rates observed in this fishery in 2004–08, NMFS estimates 5,550 sets would result in 19 leatherback interactions. However, due to concerns about the decline of the Western Pacific leatherback population, NMFS retained the annual interaction limit for leatherback sea turtles at 16. This interaction limit is identical to the limit imposed on the fishery during 2004–08 and, therefore, the risk to leatherback turtles is not increased.

Comment 25: Pacific leatherback populations have declined more than 90 percent in the last several decades, and this rule would further threaten them.

Response: The nesting beach trend is in decline at the only western Pacific nesting beach (Jamursba-Medi, Papua, Indonesia) where long-term leatherback nesting has been monitored. Other leatherback nesting beaches in the western Pacific may also be in decline, but there are no long-term nesting beach data to make a determination. As noted in Section 4.4.2.1.5 of the FSEIS, though greater numbers of nesting female leatherbacks have been discovered in the western Pacific, trend information is not available for these newly described nesting sites, thus no statements can be made describing the anticipated outlook (i.e., status) for these populations for which there are no trend data.

The number of nesting female leatherbacks in the southwestern Pacific appears to be greater than previously stated in Spotila (1996) or NMFS (2004). However, the continuation of proven regulatory measures and associated conservation efforts is necessary. The final rule does not further threaten the Western Pacific leatherback, because there will be no change in the number of authorized interactions with leatherbacks (16) and the expected resultant adult female mortalities (up to two per year) cannot be distinguished from the effects of natural mortality. The 2008 BiOp indicated that this final rule will not jeopardize the continued existence or recovery of leatherback populations.

Comment 26: Existing management of the shallow-set fishery is not likely to offer enough protection to sea turtle, marine mammal, and seabird species, and all of the proposed alternatives in the final rule are unacceptable, including the ''no action'' alternatives.

Response: Sea turtle mitigation measures implemented in the fishery in 2004, such as the required use of circle hooks and mackerel-type bait, successfully reduced sea turtle interaction rates by approximately 90 percent for loggerheads and 83 percent for leatherbacks compared to the 1994–2002 when the fishery operated without these measures. The severity of the interactions has also been greatly reduced as indicated by the number of turtles that have been deeply vs. lightly hooked (Table 3, p. 14, FSEIS, Gilman and Kobayashi 2007). Prior to the use of circle hooks and mackerel-type bait, 51 percent of sea turtle interactions in the fishery from 1994–2002 were believed to have involved deeply hooked turtles. From May 2004 to March 2007, fewer than 12 percent of the hooked sea turtles were classified as deeply-hooked.

Shallow-set fishery interactions with marine mammals are rare and apparently random events. Accordingly, potential marine mammal protective measures for the Hawaii shallow-set fishery are limited, based on limited data. Data are collected on all marine mammal interactions and depredation events and analyzed for trends or patterns that could enlighten areas where mitigation efforts would be successful. In April 2009, NMFS began the process to develop a Take Reduction Plan (TRP) and assemble a Take Reduction Team (TRT). Implementation of the full TRT is subject to the availability of funding. Once a TRT is officially designated, the MMPA requires a draft TRP to be completed within six months. The scope of the TRP has not yet been established.

Seabird mitigation requirements implemented in the fishery in 2001, such as the use of line shooters, weighted lines, side setting, night setting, and blue-dyed bait yielded a 96 percent reduction in the combined black-footed and Laysan albatross shallow-set interaction rate compared to 1994–98. The current seabird deterrent and mitigation measures remain in effect and are not affected by this final rule.

Comment 27: Fishery managers and participants should not consider the sea turtle serious injury and mortality take limits to be an acceptable level of taking, or a quota, when recovery of these turtle stocks would be best

achieved by reducing the number of takes to the lowest possible level.

Response: The loggerhead and leatherback sea turtle annual interaction limits are not regarded as a serious injury or mortality limit. A loggerhead or leatherback turtle hooked or entangled to any degree or manner counts against the annual limit. The 2008 BiOp determined that the effects of the action are likely to be indistinguishable from the effects of natural mortality. NMFS will continue to promote the recovery of loggerhead and leatherback sea turtles and will continue to require the use of proven regulatory measures for turtles, such as large circle hooks, mackerel-type bait, handling and resuscitation techniques, and annual protected species workshops. Additionally, NMFS continues to support the Council's sea turtle nesting beach projects to protect Western Pacific leatherback turtles in Wermon Beach, Indonesia, and Huon Coast, Papua New Guinea, as well as projects in Japan to protect nesting loggerheads and projects in Mexico to protect foraging loggerheads. For instance, based on the most recent nesting data available, the Wermon Beach project annually produces approximately 40,000 leatherback hatchlings, and the Huon Coast project produces approximately 12,000 leatherback hatchlings each year, most of which would not survive without the conservation projects.

Comment 28: Sea turtle populations in the Pacific are seriously reduced as the result of excessive, unregulated fisheries in international waters, so strict protections should continue, because U.S. protections diminish the threats to sea turtles while they are in domestic waters.

Response: NMFS is actively engaged in efforts to combat illegal, unreported and unregulated (IUU) fishing through participation in international conventions such as WCPFC and IATTC. NMFS will continue to protect sea turtles, wherever U.S. fishing vessels operate, including within the EEZ and on the high seas, and diminish threats by imposing strict interaction limits, proven fishing methods and gear to reduce the number and severity of potential bycatch interactions, as well as required annual protected species workshops to educate fishermen.

Comment 29: It is arbitrary and inconsistent with the ESA for NMFS to factor speculative and unproven ''market transfer effects'' of domestic fishing regulations into its jeopardy analysis.

Response: NMFS is required to use the best available scientific information in formulating its biological opinions. As described in the 2008 BiOp, the market transfer effect with regard to the Hawaii longline fishery was described in the NMFS 2001 EIS and in two peer-reviewed papers. These papers suggest that a beneficial market transfer effect with regard to turtles could occur with an increase in the U.S. fishery because of the more stringent measures in place to reduce interactions with protected resources, in comparison to less heavily regulated foreign fisheries. This information could not be omitted in a biological opinion on the proposed expansion of the fishery.

While the best available scientific information suggests that an increase in the U.S. fishery could result in a beneficial transfer effect, the information is inadequate to quantify any such effect. The potential for the beneficial transfer effect was described in the 2008 BiOp; however, it was not quantified or included in the Susceptibility to Quasi-Extinction (SQE) model used to quantify the effects of the action on the North Pacific loggerhead population. That is, the SQE model in the 2008 BiOp assumed zero market transfer effect. Thus, the analysis remained very conservative.

Comment 30: The listing of ''stressors'' to the affected populations on page 49 of the 2008 BiOp, and discussed in greater depth later, is woefully lacking and focuses largely on impacts of entanglement (interactions) by the shallow-set longline fishery.

Response: ''Effects of the action'' on page 49 of the 2008 BiOp refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action that will be added to the environmental baseline. The environmental baseline section described all past and present human impacts within the action area, and included fisheries interactions, climate change, and marine debris. The ''Effects of the Action'' section focuses on interactions with the shallow-set fishery, because that is the largest impact. The ''Effects of the Action'' are considered within the context of the ''Status of Listed Species'' and ''Environmental Baseline'' sections of the opinion to determine if the action can be expected to have direct or indirect effects on threatened and endangered species that appreciably reduce their likelihood of surviving and recovering in the wild by reducing their reproduction, numbers, or distribution (50 CFR 402.02), otherwise known as the jeopardy determination. ''Indirect effects'' are those that are likely to occur later in time (50 CFR 402.02).

Comment 31: In Hawaii, the Western Pacific Fishery Management Council is well known for allowing overfishing of Hawaii's fisheries for short-sighted profits resulting in many local fisheries near and even total collapse and a scarcity of local fish in Hawaii's own markets. The Council is under Federal investigation, and must not be allowed to establish any new catch limits, fisheries, or guidelines under their existing administration, and they also present an imminent danger to the sustainability of Hawaii's fisheries.

Response: Under the Magnuson-Stevens Act, the Council has management purview for U.S. fisheries in Federal waters around American Samoa, the Northern Mariana Islands, Guam, Hawaii, and the Pacific Remote Island Areas. The primary responsibility of the Council is to develop and recommend specific management measures in the form of fishery management plans, subject to the approval and implementation by the Secretary of Commerce via delegation to NMFS. Recent amendments to the Magnuson-Stevens Act in 2006 mandate the Council to develop annual catch limits and accountability measures to prevent and end overfishing for each of its managed stocks among other measures.

According to a NMFS 2008 Report to Congress on the status of U.S. fisheries, the Council has prepared and NMFS has approved five fishery management plans which contain 45 stocks or complexes. Of these 45 stocks and stock complexes, one stock, bigeye tuna, is subject to overfishing, one stock complex, Hancock seamount groundfish, is overfished, and no other stocks or stock complexes are approaching an overfished condition. Both bigeye tuna and seamount groundfish are fished by international fishing fleets, so ending overfishing of bigeye tuna stocks and rebuilding of the overfished seamount groundfish stock complex cannot be achieved by U.S. action alone.

In June 2009, the Government Accountability Office of the United States (GAO) completed an internal review of Council operations to determine the validity of allegations of wrongdoing raised by several Hawaii-based conservation advocacy organizations. The GAO's full report of the review is available at www.gao.gov. None of the allegation addressed the competency of the Council to fulfil its statutory responsibilities under the Magnuson-Stevens Act.

Comment 32: NMFS should focus its resources on correcting existing legal

deficiencies in the management of this fishery, obtaining better data on the target and non-target species affected by the fishery, and providing effective protection to threatened and endangered species so that they may recover to the point where ESA protection is no longer necessary.

Response: NMFS is currently unaware of any legal deficiencies in the management of the shallow-set fishery that would require correction. NMFS is mandated to implement the ESA with the goal of recovering all applicable ESA-listed species to the point that protections under the ESA are no longer necessary. In addition, 100 percent observer coverage of the shallow-set fishery will continue, as well as proven sea turtle and seabird mitigation measures, and will not be modified by the final rule.

Comment 33: The level of effort that this rule change would allow has not been tested and asserts that it is unreasonable, bordering on reckless, to allow a fishery which has never reached the 2,120 effort limit to have an unlimited number of sets in an untested arena.

Response: From 1994–99, the average shallow set effort of the Hawaii longline fleet was about 4,240 sets, with a high around 5,500. The shallow-set fishery was severely constrained in 2001 by emergency regulations due to interactions with sea turtles. The fishery re-opened in 2004 as a ''model'' fishery with a 2,120 annual set limit (half of the historical effort) to assess the effectiveness of sea turtle mitigation measures including large circle hooks and mackerel type bait.

The 2008 BiOp considered whether removing the annual limit on fishing effort, thus, allowing an increase of the Hawaii shallow-set longline fishery (the final rule), would likely jeopardize the continued existence of any ESA-listed species. The 2008 BiOp analyzed the effects of the continued operation of the Hawaii shallow-set longline fishery based at an effort level of 5,550 sets annually, or over 4.6 million hooks which, the historical high effort from 1994–99. Analysis of data sufficiently concluded that the final rule, including the continuation of existing and proven sea turtle and seabird mitigation measures and 100 percent observer coverage, will not jeopardize the continued existence and recovery of any protected species populations or result in overfishing or overfished conditions of any target or non-target stocks.

Comment 34: An increase in fishing effort should not be associated with an increase in the allowable sea turtle interaction limits, because if the management measures work, then it would not be necessary. It is contrary for NMFS to say that they have reduced bycatch, and in particular loggerhead sea turtle interactions by some 90 percent, and then proposes to nearly triple the loggerhead turtle interaction cap. The proposal testifies to the opposite.

Response: To test the effectiveness of the gear combination, fishing effort in the model Hawaii fishery was limited to 2,120 sets, roughly half of the 1994–99 annual average number of sets. As an additional safeguard, an annual limit was implemented on the number of unintended interactions with sea turtles that could occur in the shallow-set fishery. The limit was calculated by multiplying the number of sets, 2,120, by sea turtle interaction rates in the Atlantic experiments. The fishery would be closed for the remainder of the calendar year if either interaction limit was reached. Since reopening of the fishery in 2004, sea turtle interactions in the Hawaii shallow-set longline fishery have been successfully reduced by a combined 89 percent compared to 1994–2002, when the fishery was operating without sea turtle mitigation requirements and the reasonable and prudent measures of the 2004 BiOp. Interaction rates are significantly lower than in the past; however, no single mitigation or measure is completely effective. Interaction limits provide an additional level of confidence that fishery interactions do not exceed authorized levels under current sea turtle mitigation requirements and reasonable and prudent measures. The final rule follows a layered approach to ensure protection of sea turtles.

The 2008 BiOp based the number of anticipated interactions upon the high end of potential fishing effort of 5,550 sets annually. Using sea turtle interaction rates obtained from 100 percent observer data onboard shallow-set vessels since 2004, 46 loggerheads and 19 leatherbacks annual interactions were projected to occur at this fishing effort level. Due to data gaps and assumed poor nesting beach trends of leatherbacks in the non-Jamursba-Medi component of the Western Pacific population, the 2008 BiOp authorized number of annual leatherback interactions remained at 16 rather than the projected 19. The potential expansion of fishing effort corresponds with the increase in the annual number of expected loggerhead sea turtle interactions of 46. The annual sea turtle interaction limits do not represent the upper limit of interactions that would avoid jeopardizing the continued existence of loggerhead and leatherback sea turtles, but instead are the annual number of sea turtle interactions anticipated to occur in the shallow-set fishery. The realized annual interactions may be lower than 46 and 16 per year.

Consistent with applicable laws, the final rule intends to increase opportunities for the shallow-set fishery to sustainably harvest swordfish and other fish species, without jeopardizing the continued existence of sea turtles and other protected resources. The final rule will increase the current limit on incidental interactions that occur annually between loggerhead sea turtles and shallow-set longline fishing.

Comment 35: Scientists are opposing developers to preserve La Playa Grande, a leatherback nesting site in Costa Rica. Adding the expansion of Hawaii shallow-set swordfish fishery and increasing the number of turtles that could be caught will finish off the Pacific leatherback.

Response: The annual leatherback sea turtle interaction limit will not change as a result of the final rule. Leatherback turtles are found on the western and eastern coasts of the Pacific Ocean, with nesting aggregations in Mexico and Costa Rica (eastern Pacific), and Malaysia, Indonesia, Australia, Vanuatu, the Solomon Islands, Papua New Guinea, Thailand, and Fiji (western Pacific). La Playa Grande is an important nesting colony for the Eastern Pacific population of leatherback sea turtles. Based on genetic sampling from 18 leatherback interactions (from 1995–2007) with the Hawaii shallow-set longline fishery, all of the leatherback turtles that interacted with that fishery originated from western Pacific nesting beaches (none from La Playa Grande).

Comment 36: What are the scientific facts and current data concerning the status of loggerhead turtles, and the impact that this rule change may have upon them? This should be made a part of a proposed rule change so that the public can make informed comments on the issue presented to them.

Response: All relevant scientific data and information to the final rule are presented in Amendment 18 and the FSEIS, which were made available to the public as described in the **ADDRESSES** section of the proposed rule (74 FR 29158, June 19, 2009).

Comment 37: Tourism is a major interest for the economic well-being of the State of Hawaii; allowing this activity only benefits a small minority.

Response: The Hawaii longline fishery provides fish to U.S. and foreign seafood consumers, who will benefit from increased supplies of fish. This final rule is likely to have a wide beneficial effect to Hawaii's economy,

and could help increase the economic vitality and adaptive capacity of Hawaii's coastal community. It is projected in the rule that the revival of the fishery could result in the doubling of the amount of ex-vessel revenue, direct and indirect sales, personal and corporate income, and state and local taxes that are currently generated as a result of the Hawaii shallow-set fishery. In addition, the total number of jobs could more than double.

Comment 38: Under the preferred alternative, the allowable incidental take of loggerhead turtles would increase from 17 loggerheads to 49 loggerheads, and it would maintain the current limit of 16 leatherback sea turtles, a limit that has been exceeded by the fishery in the past.

Response: The annual number of loggerhead sea turtles interactions under the final rule would be limited to 46, not 49. The annual limit on leatherback sea turtle interactions would continue to be limited to 16. The leatherback limit has not been exceeded in the past. In fact, since the leatherback sea turtle interaction limit has been in place, there have been eight or fewer leatherback interactions per year. Also, under the 3–year ITS, if the number of interactions exceed the interaction limit in any given year, the fishery will close, and the annual interaction limit will be reduced by that amount the following year.

Comment 39: Although the required use of circle hooks and changes in bait have reduced sea turtle interaction rates by 90 percent for loggerheads and 83 percent for leatherbacks, the Hawaii shallow-set longline fishery was closed in 2006 for exceeding take limits.

Response: When the fishery was closed in 2006, the number of loggerhead sea turtles that interacted with the Hawaii shallow-set fishery was 17 and did not exceed the annual interaction limit. The fishery did not close as a result of reaching the interaction limit for leatherback sea turtles.

Comment 40: Under the rule, the number of sets will be allowed to increase to historic levels of over 5,500 sets per year.

Response: The final rule would remove the shallow-set fishery effort limit, and the fishery could potentially increase to historical levels. The 2008 BiOp defined and analyzed the effects of a continued operation of the Hawaii shallow-set longline fishery at an effort level of 5,550 sets annually. While exceeding 5,550 sets in one year would not necessarily close the shallow-set fishery, as noted in the Re-initiation Notice section of the 2008 BiOp, re-initiation of formal consultation is required if the agency action is subsequently modified in a manner that may affect listed species or critical habitat to an extent in a way not considered in this opinion, e.g., if more than 5,550 sets are made during one calendar year. NMFS will continue to monitor the fishery with 100 percent observer coverage, which provides comprehensive fishery information.

Comment 41: It is premature to propose increasing the fishery until NMFS addresses whether Pacific loggerheads will be listed as a distinct population segment and uplisted from threatened to endangered under the ESA. This petition should be resolved before expansion is considered for the Hawaii shallow-set fishery.

Response: On July 16, 2007, NMFS and USFWS received a petition requesting that loggerhead turtles in the North Pacific be reclassified as a distinct population segment (DPS) with endangered status and that critical habitat be designated. NMFS and USFWS committed to assess the loggerhead listing status on a global basis. In February 2008, NMFS and USFWS convened a biological review team (BRT). In August 2009, the BRT published a global Loggerhead Turtle Status Review, which concluded that the loggerhead species is composed of nine Distinct Population Segments (DPS), including a North Pacific DPS and a South Pacific DPS. The North Pacific loggerhead DPS is the only one affected by the action. The Status Review concluded that the North Pacific loggerhead DPS is at risk of extinction.

Re-initiation of formal consultation under the ESA is required on this action if (1) the amount or extent of taking specified in the ITS in the 2008 BiOp is exceeded, (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in the 2008 BiOp, (3) the action is subsequently modified in a manner that may affect listed species or critical habitat to an extent in a way not considered in the 2008 BiOp, or (4) a new species is listed or critical habitat designated that may be affected by the action. The 2009 loggerhead status review does not satisfy any of the requirements for re-initiating consultation at this time. The 2009 status review does not raise new information that would change conclusions in the 2008 BiOp. In fact, the status review did not consider all the information analyzed in the 2008 BiOp, such as nesting beach abundance. These data suggest that abundance of the loggerhead nesting populations increased over 2007 information, and appear to be continuing to increase. NMFS intends to re-initiate consultation on the effects of all of the region's pelagic fisheries on loggerhead sea turtles, if and when there is a change in this species' status under the ESA.

Comment 42: A 2000 report that estimates between 2,600–6,000 loggerhead juveniles and adults were killed by longlining, although NMFS notes that because density may be greater in the action area, the estimates may be skewed upwards. This poorly-justified assumption resulted in the agency lowering this mortality estimate to less than 1,000, minimizing the impact considered.

Response: The comment refers to the environmental baseline section of the 2008 BiOp, summarizing the past and present human impacts within the action area of the final rule. Only two sources of information were available for the 2008 BiOp regarding the number of turtles killed by longlining in the Pacific. Lewison et al. (2004) estimated that 2,600 - 6,000 loggerhead juveniles and adults were killed by pelagic longlining in 2000, and Beverly & Chapman (2007) estimated that the actual mortalities were 20 percent of the Lewison et al. (2004) estimates, or 520 - 1,200, giving a range of 520 - 6,000 loggerhead juveniles and adults killed annually. The environmental baseline for the 2008 BiOp is limited to the action area, which is less than 10 percent of the area that is longline fished in the Pacific. Thus, based on area alone, the total number would be less than 10 percent of 520 - 6,000 loggerhead juveniles and adults killed annually (i.e., less than 52 - 600). However, since loggerheads may be denser in the action area than elsewhere in the Pacific, and longline fishing effort has increased since 2000, 10 percent of 520 - 6,000 (i.e., 50 - 600, when applying appropriate rounding) was considered to be the best estimate of the total number of loggerhead juveniles and adults killed annually by longlining within the action area.

Comment 43: The Draft EIS and Final EIS both read in places as if the take of turtles is part of the activity being authorized, rather than an environmental impact of the fishing activity under consideration. This approach is completely inconsistent with the ESA and must be rejected, as it was during the 2004 rulemaking.

Response: Establishment of annual sea turtle interaction limits are not part of the Federal action, which, among other measures, is the removal of the fishing effort limit currently in place. Annual sea turtle interaction limits were

established through the ITS contained in the 2008 BiOp.

Comment 44: NMFS should not endorse a fishery management plan amendment that is predicated almost entirely on increasing authorized levels of bycatch resulting in injury and mortality to ESA-protected species.

Response: The purpose of Amendment 18 is to provide increased opportunities for the shallow-set fishery to sustainably harvest swordfish, and other fish species, while continuing to avoid jeopardizing the continued existence and recovery of threatened and endangered sea turtles as well as other protected species. When a Federal agency's action ''may affect'' an ESA-listed species that agency is required to conduct ESA Section 7 consultation. NMFS conducted Section 7 consultation to ensure that removal of the effort (set) limit for this fishery, and any resulting increase in fishing effort, is not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of critical habitat of such species. The 2008 BiOp is the result of this consultation. Subsequently, NMFS approved the FMP amendment to allow the expansion of the swordfish fishery by removing the effort limit and set certificate program, and set an annual interaction limit that is predicated on increasing the loggerhead sea turtle interaction limits to a level of expected interactions that corresponds to the potential increase in fishing sets (5,500). The 2008 BiOp analyzed the effects of continuing the shallow-set fishery at 5,550 sets per year, not based on sea turtle interactions. Amendment 18 and the FSEIS analyzed the effects of optimizing the yield of swordfish, and other fish species, while avoiding jeopardy to ESA-listed species, and minimizing bycatch and associated bycatch mortality. See the response to Comment 60 for how the sea turtle interaction limits were calculated.

The Magnuson-Stevens Act broadly gives the Council and NMFS the authority to undertake appropriate measures to control bycatch. ''Bycatch'' is defined as ''fish which are harvested in a fishery, but which are not sold or kept for personal use.'' ''Fish'' in turn, is defined to mean ''finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.'' Therefore, turtles are regarded as fish and are bycatch since they can neither be sold, nor kept for personal use. National Standard 9 requires that the Council and NMFS minimize bycatch and bycatch mortality. Therefore, it is a permissible action under the Magnuson-Stevens Act to establish an annual sea turtle (or any other species) interaction limit in a fishery. Limiting the impacts of the Hawaii-based shallow-set longline fishery on loggerhead and leatherback sea turtles is the purpose of setting the interaction limits.

Comment 45: Money should be invested into finding alternate ways to sustainably raise fish for human consumption.

Response: NOAA is at the forefront in making the U.S.A. self-sufficient in the production of seafood. The core of this initiative is strengthening our commercial and recreational marine fisheries supported by sustainable domestic marine aquaculture for finfish and shellfish. The President's 2010 budget request to Congress includes $6.1 million for NOAA's Aquaculture Program at NMFS, and $1.6 million for the National Marine Aquaculture Initiative at the NOAA Office of Oceanic and Atmospheric Research. This request includes a $2 million increase for the NOAA Aquaculture Program. The funding increase would support a wide range of commercial marine aquaculture and marine stock enhancement research, including developing various aquaculture feeds and exploring ways to reduce environmental impacts of commercial aquaculture. NOAA is developing a comprehensive national policy for marine aquaculture which includes the protection of ocean resources and marine ecosystems. Such a policy will enable greater investments for alternative ways to increase seafood supply for U.S. consumers.

Comment 46: NMFS failed to account for the fishery's effect on recovery of the Pacific leatherbacks and North Pacific loggerheads, or its effects in the context of changing conditions by relying on the susceptibility to quasi-extinction analysis (SQE), the assumptions are too speculative to support the increase in authorized annual interactions from 17 to 46. As such, there is substantial uncertainty in deriving sea turtle population estimates, and major impacts on the results are possible with changes in any of the assumptions.

Response: The effects of the action and the jeopardy analysis are two sequential components of the 2008 BiOp. The effects of the action refer only to the direct, indirect, interrelated, and interdependent effects of the action on the listed species that will be added to the environmental baseline. The jeopardy analysis considers the effects of the action within the context of the status of the listed species and the environmental baseline, along with the cumulative effects, to determine if the action is likely to reduce the survival and recovery of the listed species.

The ''effects of the action'' component of the 2008 BiOp, which was peer-reviewed, uses the best available scientific information to estimate turtle mortality resulting from the action. These estimates are based on numerous assumptions, all of which are made very conservatively to produce an estimate that is very likely to be higher than the actual mortality from the action, and very unlikely to be lower than the actual mortality from the action. These estimates then provide the inputs for the susceptibility to quasi-extinction analysis (SQE) model, which is used to quantify the effect of the mortality on affected populations in terms of extinction risk. By very conservatively estimating the inputs into the SQE model, the output of the model very likely overestimates the impact of the action.

The jeopardy analysis component of the 2008 BiOp relates the effects of the action to the status of the listed species, the environmental baseline, and the cumulative effects to determine the effect of the action on survival and recovery of affected species. Nesting of the North Pacific loggerhead population has increased several-fold in the last 10 years. Mortality from all longline fishing combined within the action area for the action is estimated at 50 - 600 juvenile and adult loggerheads annually, and some additional but unquantifiable mortality is likely also occurring due to climate change, ship traffic, and marine debris within the action area (the environmental baseline). Increases in loggerhead mortality may occur due to future worsening climate change and increasing fishing, ship traffic, and marine debris within the action area (the cumulative effects). The action is expected to have a maximum mortality of 10 juvenile and adult loggerheads annually. Within the context of the status of the species and the environmental baseline, and considered together with the cumulative effects, the action is not expected to reduce the likelihood of survival or recovery (no jeopardy) of the North Pacific loggerhead population.

Comment 47: NMFS has failed to take action on designating critical habitat for Pacific leatherbacks.

Response: Critical habitat was designated in 1998 for leatherback turtles in coastal waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands. In 2007, NMFS received a petition to revise the critical habitat designation. NMFS published a 90–day finding on the petition in December 2007, and continues to compile and

evaluate biological information upon which to base a response to the petition.

Comment 48: The ESA Section 10(a) conservation plan should be re-visited and the applicant should demonstrate that they will minimize impacts and show that this action will not reduce the survival and recovery of the turtles in the wild.

Response: The final rule is a Federal action involving the commercial fisheries that fall under ESA Section 7. A Section 10(a) conservation plan is not applicable to the final rule. The 2008 BiOp analyzed the continued operation of the shallow-set fishery at 5,550 sets annually and concluded there is no jeopardy to the continued existence for all ESA-listed species in the action area, including sea turtles.

Comment 49: The action violates the MMPA, since the Hawaii pelagic longline fishery is known to injure and kill humpback and false killer whales, other marine mammals.

Response: The shallow-set fishery interacts with marine mammals, incidental to fishing operations; however, this does not violate the MMPA. The Marine Mammal Authorization Program (MMAP) allows commercial fishermen to lawfully ''incidentally take'' marine mammals in a commercial fishery. Participation in the MMAP is part of the issuance of Hawaii longline limited access permits. Managers officially began considering the deep- and shallow-set components as distinct fisheries in 2008, with the 2009 List of Fisheries final rule (73 FR 73032, December 1, 2008), based on the deep-set regulatory definition. The shallow-set fishery is classified as a Category II fishery, defined as a fishery that has occasional serious interactions with marine mammals greater than 1 percent and less than 50 percent of the PBR level. The level of interactions with other non-strategic marine mammal stocks and the shallow-set longline fishery are not significant, or above known PBR levels.

Humpback whales move through the action area to Hawaii only in the winter months, and there is a lack of a uniform occurrence of the species across spatial distribution of the longline fishery. The Hawaii-based longline fishery generally occurs at locations where humpback whales are uncommon. Thus, interactions between the Hawaii-based longline fishery and humpback whales are rare and unpredictable events when viewed in relation to the amount of fishing effort that has occurred in the Hawaii-based longline fishery (0.00037 interactions per set). There has never been an observed mortality with this species due to the fishery, and since 2001, there have been only five observed interactions between humpback whales and the Hawaii-based longline fleet. Of the interactions that have occurred, most have been with deep-set longline gear. During this same time period, the Central North Pacific (CNP) stock of humpback whales has increased in size to 18,000 individuals, and is growing at an annual rate of 4.9 to 6.8 percent, an increase of several hundred animals annually. There have been two observed interactions in the shallow-set longline fishery, in 2006 and 2008. In each instance, efforts were taken to disentangle the whale, and all whales were either released or able to break free from the gear without noticeable impairment to the animals' ability to swim or feed. Based upon the rarity of interactions and the large and growing North Pacific humpback whale population, the BiOp concluded that the action will not jeopardize the North Pacific humpback population. NMFS continues to research techniques and gear modifications to mitigate interactions with marine mammals.

Comment 50: NMFS should undertake the following activities prior to any proposed increases in fishing effort to obtain the necessary information on stock status: (1) conduct the research needed to clarify the stock structure of the marine mammal species that may be taken in the Hawaii shallow-set longline fishery, (2) complete the surveys needed to provide up-to-date, reliable estimates of stock abundance, and (3) revise the potential biological removal level of each stock. The Hawaii shallow-set longline fishery is a Category II fishery under the MMPA and interacts with bottlenose dolphins, Bryde's whales, humpback whales, Risso's dolphins, pygmy sperm whiles, and sperm whales. With the exception of central North Pacific humpback whales, the stock structure for these marine mammals is poorly known. In addition, the abundance of most of these stocks and their total fisheries-related mortality are also poorly known.

Response: Although this comment does not directly pertain to the final rule, NMFS provides a brief response. The best available science, including 100 percent fishery observer coverage, was used to develop Amendment 18 and the 2008 Biological Opinion. Under the 1994 amendments to the MMPA, NMFS is required to publish SAR for all stocks of marine mammals within U.S. waters, to review new information every year for strategic stocks and every three years for non-strategic stocks, and to update the stock assessment reports when significant new information becomes available. The final rule will not affect the research needed for a SAR, including field surveys or revisions to the potential biological removal levels of each marine mammal stock. Comments regarding the stock structure research or abundance levels to the SAR should be submitted during the SAR comment period. Comprehensive shallow-set fishery observer coverage will continue to monitor any fishery interactions with marine mammals. The final rule is not likely to cause significantly adverse effects on marine mammal stocks.

Comment 51: NMFS should fund suitable observer coverage for all western Pacific fisheries at levels needed to obtain reasonably accurate and precise estimates of marine mammal takes. The NMFS report ''Revisions to Guidelines for Assessing Marine Mammal Stocks (GAMMS II)'' recommends a coefficient of variation of 0.30 to ensure adequate precision. Assessing the accuracy of abundance estimates will be more difficult, but at the least it will require studies of each stock's distribution and movements to plan suitable abundance surveys.

Response: NMFS observers continue to monitor every shallow-set longline trip and collects scientific information on the causes and types of interactions that occur, so this comment is not directly applicable to the final rule. Any research for marine mammals and their stock's distribution and abundance would be more appropriately addressed in the SAR. However, NMFS considers every opportunity for research and data collection, especially with regard to appropriate levels of observer coverage. Any decisions to expand population assessments are ultimately subject to funding availability.

Comment 52: NMFS should evaluate all observed and documented fisheries-related injuries to humpback whales to determine whether they were serious, and consider them as such in the absence of definitive information. At the current reduced level of fishing effort, observers have documented two interactions between the shallow-set fishery and humpback whales since 2004, one in 2006 and another in 2008. Both were recorded merely as injuries, with no indication as to whether they were or were not serious. Such information is important for characterizing the fate of the animals and making informed determinations regarding the total effect of fishery interactions on humpback whales. That is, incidental takes of humpback whales in this fishery would appear to have few population-level consequences, but must be combined with those from other fisheries to provide a comprehensive

understanding of fishery effects on these whales. Taking a conservative or precautionary approach in the face of incomplete data is essential to ensure that the whale populations involved are given adequate protection and in provide an incentive for collecting better information in the future.

Response: This final rule has no impact on the determinations of humpback whale interactions with the Hawaii-based shallow-set longline fishery. Nonetheless, the current NMFS system for reviewing marine mammal injury records for the Central North Pacific stock of humpback whales is conducted through the Alaska Fisheries Science Center and the Alaska Scientific Review Group (SRG). The Alaska SRG is an advisory body which provides injury determination recommendations to NMFS. NMFS then makes the final determination whether the injury is considered serious or not serious.

Comment 53: NMFS should convene a TRT to address false killer whale bycatch in the Hawaii deep-set longline fishery in the Pacific Islands area, but also include the Hawaii shallow-set longline fishery and the stocks taken in that fishery under the purview of the team. The Hawaii shallow-set longline fishery takes individuals from a number of other stocks (e.g., Risso's dolphins, bottlenose dolphins, and central North Pacific humpback whale), which is one indicator of the need for take reduction efforts.

Response: This comment addresses false killer whale bycatch in the Hawaii-based longline fisheries, and this final rule does not include any provisions, authorizations, or mandates for a TRT. When applicable, Section 118(f)(1) of the MMPA requires NMFS to ''develop and implement a Take Reduction Plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii).'' The definition of ''strategic stock'' includes marine mammal stocks for which the level of direct human-caused mortality exceeds the PBR. The Hawaii pelagic stock of false killer whales is the only known strategic stock from the Pacific Islands Region that interacts with the Hawaii-based deep-set longline fishery, which is not the subject of this final rule. In April 2009, NMFS began the process to develop a Take Reduction Plan (TRP) and assemble a TRT. Once a TRT is officially designated, the MMPA requires a draft TRP to be completed within six months. The scope of the TRP has not yet been established.

Comment 54: A well-run TRT is the best mechanism to bring relevant stakeholders together to discuss and evaluate marine mammal bycatch in commercial fisheries.

Response: See response to Comment 53. When applicable, MMPA Section 118(f)(6)(C) specifies the composition of a TRT, including members with expertise with the conservation of marine mammal species and fishing practices. NMFS will adhere to these mandates and create a TRT with an equitable balance among all stakeholders.

Comment 55: NMFS has neither convened a TRT to address false killer whale injury and mortality pursuant to the MMPA, nor completed the steps necessary to properly authorize the take of humpback whales under the MMPA and ESA before increasing the fishery.

Response: See responses to Comments 49 and 53 regarding false killer whales. The final rule does not include any provisions, authorizations or mandates for a TRT. Similarly, this final rule does not impact or authorize the take of humpback whales under the MMPA or the ESA. For further information regarding humpback whale impacts, see responses to Comments 16 and 49.

Comment 56: The action would violate the Convention on International Trade in Endangered Species (CITES).

Response: CITES is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction. This rule does not permit trade in any CITES-listed species, so does not violate the treaty.

Comment 57: The expansion of the Hawaii-based longline fishery would violate the Migratory Bird Treaty Act (MBTA), and further take of seabird species is not scientifically supportable.

Response: The MBTA applies only within the United States and nearshore waters, i.e., from the shoreline seaward to three nautical miles offshore (70 FR 75075, December 19, 2005). The Hawaii-based pelagic longline fleet is prohibited from operating in those waters covered by the MBTA. In addition, the MBTA contains no provision for the incidental take of migratory birds during commercial fishing activities, and the U.S. Fish and Wildlife Service (USFWS) does not issue permits under the MBTA for incidental takes of migratory birds during otherwise lawful activities. NMFS does not believe that the MBTA was intended to disallow otherwise lawful activity merely because it has the potential to interact with migratory birds. In the absence of a permitting process to address potential conflicts between commercial fishing activities and migratory birds, NMFS will continue to promote mitigation strategies and best management practices, including workshops and the use of side-setting, to reduce and eliminate potential interactions with migratory birds. For more information see Section 6.7 of the FSEIS.

Comment 58: NMFS has not analyzed seabird interaction reduction measures, as suggested by the Department of the Interior, and the proposed regulations do not seek to minimize seabird bycatch by requiring the use of proven techniques like side-setting.

Response: All existing seabird deterrent and mitigation measures remain in effect and are not affected by this final rule. After completing the public review and comment processes afforded by the Magnuson-Stevens Act and NEPA, and after consulting with USFWS regarding the potential for incidental take of short-tailed albatross, the Council and NMFS have developed and implemented specific seabird conservation measures. Existing seabird measures have dramatically reduced the incidental take of seabirds in the shallow-set fishery to levels that are not expected to have significant adverse short- or long-term, or cumulative effects on albatrosses. Shallow-set vessels are required to set their gear at night, use thawed and blue-dyed bait, and other proven seabird interaction mitigation measures, if they choose not to employ side-setting. Shallow-set vessels have reduced the number of interactions with albatrosses, the primary component of seabird bycatch, by 96 percent. Also see response to Comment 26 for continuing seabird protections.

In September 2008, NMFS conducted an informal consultation with the USFWS on the effects of an increased shallow-set longline fishery to short-tailed albatross. USFWS concurred with NMFS that this action would not likely adversely affect the short-tailed albatross during the first year of the fishery's operation under this final rule. NMFS is working with USFWS on a BiOp on the continuation of both pelagic longline fisheries and its effects on ESA-listed seabirds and expects completion in the near future.

Comment 59: The action increases the ITS to allow more sea turtle interactions regardless of whether an increase in effort actually materializes.

Response: Amendment 18 analyzed the effects of optimizing the yield of swordfish and other fish species, while avoiding jeopardy and minimizing bycatch. By removing the effort set limit and set certificate program, which currently constrains the fishery and creates an administrative burden, NMFS

expects that the final rule will allow the fishery to increase to historical levels, allowing optimal harvest of the North Pacific swordfish stock and other fish species.

The 2008 BiOp analyzed the effects of continuing the shallow-set fishery at 5,550 sets per year, not based on sea turtle interactions. The ITS was calculated based on predicted interaction rates from observer data obtained since 2004. An incidental take is defined as a take that results from, but is not the purpose of, conducting an otherwise lawful activity (50 CFR 402.02). Although the annual sea turtle interaction limits are 46 and 16, of which the predicted mortalities (based on 100 percent observer data) could be 3 adult female loggerhead and 2 adult female leatherback sea turtles, these effects are indistinguishable from natural mortality.

Comment 60: It is not clear how the 2004 BiOp estimate of 16 leatherback takes per year with an effort cap of 2,120 sets could be essentially the same level of leatherback takes as the 2008 BiOp without an effort cap.

Response: The current annual sea turtle interaction limits set by the 2004 BiOp were not based on interaction rates in Hawaii. The limit was calculated by multiplying the number of sets, 2,120, by sea turtle interaction rates derived from Atlantic experiments using circle hooks and mackerel bait in U.S. longline fisheries, to determine the annual number of sea turtle interactions anticipated to occur in the Hawaii-based shallow-set fishery. The fishery would be closed for the remainder of the calendar year if either interaction limit was reached. The current interaction limits for loggerhead and leatherback sea turtles (2004 BiOp) do not represent the upper limit of interactions that would avoid jeopardizing the continued existence of sea turtles.

The 2008 BiOp analyzed the effects of 5,550 longline sets in the action area. Using interaction rates obtained from 100 percent observer data since 2004 in the Hawaii-based shallow-set fishery, the BiOp estimated the number of interactions that would occur and came up with 46 loggerheads and 19 leatherbacks. However, due to concerns about leatherback population conditions and uncertainty about numbers of nesting females at various locations in the western Pacific, the 2008 BiOp conservatively recommended restricting the annual leatherback interactions to the current level of 16, which is reflected in the final rule.

Comment 61: The NMFS approach to its jeopardy analysis improperly compared the effects of a proposed action to the baseline condition for the species and the commenter cited *National Wildlife Federation* v. *NMFS*, (*NWF* v. *NMFS*, 481 F.3d 1224, 9th Cir. 2007) where ''baseline conditions already jeopardize a species, an agency may not take action that deepens the jeopardy by causing additional harm'' and ''that the agency must consider not only the likelihood of extinction in its jeopardy analysis, but also prospects for recovery.''

Response: There are no current or proposed Federal actions that jeopardize ESA-listed species within the action area, so the court ruling for *NWF* v. *NMFS* is not applicable to this action. The environmental baseline for a biological opinion includes the past and present impacts of all state, Federal, or private actions and other human activities in the action area. The anticipated impacts of all proposed Federal projects in the action area that have already undergone section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process are also included (50 CFR 402.02). The ESA Consultation Handbook further clarifies that the environmental baseline is ''an analysis of the effects of past and ongoing human and natural factors leading to the current status of the species, its habitat (including designated critical habitat), and ecosystem, within the action area.'' The purpose of describing the environmental baseline in this manner in a biological opinion is to provide the context for the effects of the proposed action on the listed species. The past and present impacts of human and natural factors leading to the status of the six species addressed by the 2008 BiOp within the action area include fishing interactions, vessel strikes, climate change, pollution, marine debris, and entanglement.

In some cases, such as when an ESA-listed species consists of a single, small, declining population, and environmental baseline conditions are continuing to deteriorate, any additional harm could constitute jeopardy. For example, due to concerns about the likely decline of the Western Pacific leatherback population, and due to the uncertainty of information about leatherback populations, the annual interaction limit for leatherback sea turtles was retained at the current level of 16. Such is not the case with the North Pacific loggerhead population. Some 10,847 loggerhead nests were counted in Japan in 2008, more than any year since comprehensive records were started in 1990, and up from 2,000 nests in 1999. The 2008 nests represent several thousand adult females. Not all adult females nest every year, and loggerheads mature at approximately 30 years of age; thus, the total North Pacific loggerhead population is neither small nor declining. In addition, as described in the 2008 BiOp, numerous conservation efforts are being implemented throughout the range of the population to attempt to reduce mortality during all life stages. The potential mortality of a maximum of 10 loggerhead male and female adults and juveniles annually will not appreciably reduce the likelihood of survival and recovery of the North Pacific loggerhead population.

Comment 62: The Hawaii shallow-set fishery is the most rigorously and successfully regulated commercial fishery in the world.

Response: NMFS agrees that the Hawaii-based shallow-set fishery is well-managed to sustainably harvest swordfish with conservative measures and regulations to reduce impacts to sea turtles, seabirds, and other marine wildlife. In light of the severe contraction of domestic economic activity, the fishery should be allowed to operate under the optimal yield mandate of the Magnuson-Stevens Act. This final rule is consistent with that mandate.

Comment 63: Amendment 18 is based on sound data and science, scrutinized and accepted as the best available data and information.

Response: NMFS agrees that Amendment 18 and its implementing regulations are based on the best scientific information available. Amendment 18 adheres to published standards for preparing a final rule to an FMP or amendment. NMFS must comply with the requirements of the Magnuson-Stevens Act, National Environmental Policy Act, Administrative Procedure Act, Paperwork Reduction Act, Coastal Zone Management Act, ESA, MMPA, and Executive Orders 13132 (Federalism) and 12866 (Regulatory Planning). NMFS has determined that Amendment 18 is consistent with the National Standards of the Magnuson-Stevens Act, and all other applicable laws.

National Standard 2 of the Magnuson-Stevens Act requires conservation and management measures to be based upon the best scientific information available. In accordance with this national standard, the information product incorporates the best biological, social, and economic information available to date, including the most recent biological information on, and assessment of, the pelagic fishery resources and protected resources, and

the most recent information available on fishing communities, including their dependence on pelagic longline fisheries, and up-to-date economic information (landings, revenues, etc.).

Amendment 18 was prepared by the Council and NMFS based on information provided by NMFS Pacific Islands Fisheries Science Center (PIFSC) and NMFS PIRO. The information product was reviewed by PIRO and PIFSC staff, and NMFS Headquarters.

Comment 64: The fish species and stocks targeted by the shallow-set fishery are abundant and healthy at levels that can sustainably support the projected growth in the shallow-set fishery under Amendment 18.

Response: NMFS agrees. As noted in the 2008 stock status report to Congress and current stock assessments, no species caught by the shallow-set fishery is overfished or approaching an overfished condition. The North Pacific swordfish stock is currently fished at about 65 percent of the MSY, with the Hawaii-based shallow-set longline fishery harvesting 6 - 12 percent since the fishery was reopened in 2004, allowing for increased harvest.

Comment 65: Restrictions in the shallow-set longline fishery results in more sea turtle interactions, not less. See Rausser, G., M. Kovach, and R. Sifter. 2008. Unintended Consequences: The spillover effects of common property regulations. Marine Policy 33(1), January 2009, pp. 24–39.

Response: ''Market transfer effects'' generally refer to the transfer of catch from one region to other regions as a result of a regulation; the referenced paper examines a particular case of the market transfer effect of endangered sea turtle bycatch resulting from the 2001–04 closure of the Hawaiian longline swordfish fishery. There are two steps to the analysis. First, a model of swordfish demand and supply is estimated by a system of simultaneous equations to identify the magnitude of the market transfer effect of swordfish catch from U.S. fishery to non-U.S. fishery. Then, an analysis measures the effects of the swordfish market transfer on sea turtles. The analysis found that the closure of the Hawaiian longline swordfish fishery during 2001–04, which was motivated by the protection of endangered sea turtles, resulted in an estimated transfer of 1,602 mt of swordfish catch to non-U.S. fisheries, leading to an estimated additional 2,882 sea turtle interactions.

Comment 66: Amendment 18's preferred alternatives of lifting the annual shallow-set effort limit and eliminating the set certificate program will allow the shallow-set fishery to return to historical levels of fishing, which has the potential to reduce pressure on Pacific bigeye and yellowfin tuna stocks by promoting a shift in fishing effort to swordfish-targeted shallow-set longlining.

Response: NMFS expects that removal of the set certificate program will allow vessels to shift effort from targeting tuna in the deep-set fishery to targeting swordfish in the shallow-set fishery. Effort in the shallow-set fishery may gradually increase to historical levels. Some 10–30 vessels are projected to eventually join the existing 30 vessels in the fishery. The maximum number of Hawaii longline limited entry permits is 164 for the deep- and shallow-set fisheries, combined.

Comment 67: Increased shallow-set fishing effort under Amendment 18 will not have an appreciable adverse impact on affected Pacific populations of sea turtle species.

Response: NMFS agrees that the affected populations of Pacific sea turtles will not be jeopardized under this action. The 2008 BiOp analyzed the effects of the continued operation of the Hawaii-based shallow-set longline fishery based at an effort level of 5,550 sets annually, or over 4.6 million hooks. The opinion concluded that the action is not likely to jeopardize the continued existence of any ESA-listed species. Although the annual sea turtle interaction limits are 46 and 16, for loggerhead and leatherback turtles, respectively, the predicted mortalities (based on 100 percent observer data) at the interaction limits would be three adult female loggerhead and two adult female leatherback sea turtles, the effects of which would be indistinguishable from natural mortality. Further, the ITS is conservative and the fishery will continue to be monitored by 100 percent observer coverage.

Comment 68: Pacific loggerhead and leatherback nesting beach conservation measures were undertaken and continue as a result of the Hawaii-based commercial longline fisheries.

Response: NMFS continues to support conservation and recovery of ESA-listed species. See response to Comment 1 with respect to NMFS responsibilities to conserve and protect living marine resources and the survival and recovery of ESA-listed species.

The Council and NMFS have been supporting sea turtle conservation projects at key loggerhead and leatherback nesting beaches from which individuals interacting in the Hawaii-based longline fisheries originate. Preliminary results from an analysis conducted by PIFSC (Kobayashi, NMFS, unpublished data) suggest that approximately 3 to 75 additional loggerhead hatchlings would equal 1 loggerhead juvenile taken in the fishery, and that approximately 55–550 additional leatherback hatchlings would equal 1 leatherback juvenile taken in the fishery. The model used to estimate the number of hatchlings required to offset fishery impacts takes into consideration simultaneous impacts from other sources (such as harvest and other fisheries), and thus provides a realistic estimate of the current state of sea turtle populations. If the allowed maximum number of interactions were to occur in the shallow-set fishery final rule, the model projects that 138 to 3,450 loggerhead hatchlings and 935 to 9,350 leatherback hatchlings would be needed to offset the impacts of fishery interactions. The Council-supported nesting beach projects could offset the impacts.

All North Pacific loggerhead turtles are known to originate from nesting beaches in Japan. The Council has supported nesting beach monitoring and conservation activities at four locations in Japan since 2003. One of the important activities undertaken is the relocation of nests from erosion-prone and inundation areas to improve hatchling production. In 2008 alone, the Council project relocated 80,955 loggerhead eggs, with an estimated 48,573 loggerhead hatchlings produced from those relocated nests. These numbers exceed the estimated 138 to 3,450 loggerhead hatchlings needed to offset impacts from the Hawaii longline fishery.

The Council also supports two nesting beach projects to protect Western Pacific leatherback turtles in Wermon Beach, Indonesia, and Huon Coast, Papua New Guinea. Both project areas had very low hatchling production prior to project inception due to egg harvests, nest predation, and inundation. The use of monitoring staff on nesting beaches to prevent egg harvest from occurring and deployment of simple bamboo grids over nests to prevent dog, pig, and lizard depredation of eggs have been effective in increasing hatchling production in these areas. Based on the most recent nesting data available, the Wermon Beach project produces approximately 40,000 leatherback hatchlings, and the Huon Coast project produces approximately 12,000 leatherback hatchlings each year, most of which would not survive without the conservation project in place. The over 50,000 leatherback hatchlings produced annually in Council projects exceed the estimated 935 to 9,350 hatchlings needed to offset impacts from the Hawaii longline fishery.

Comment 69: With increased shallow-set effort, more non-target species, such as sharks, will be caught in the fishery.

Response: Blue sharks are the most often-caught sharks in the shallow-set longline fishery. Approximately 94 percent of those caught are returned alive to the sea and are believed to survive. Fish bycatch in the Hawaii shallow-set longline fishery is estimated to be limited to 6–7 percent of the annual catch. Since no other significant changes are occurring in the fishery, it is unlikely that removing the annual set limit would increase the annual percentage of any bycatch species. As described in Amendment 18, other bycatch species are caught in insignificant numbers in relation to their maximum sustainable yields, and most of these species are kept, or returned to sea alive. In addition, based on a 2009 stock assessment, blue sharks in the Pacific are not overfished or subject to overfishing.

Comment 70: In light of the many stressors facing leatherbacks in the western and central Pacific, Amendment 18 should reduce the annual interaction limit rather than maintain the current level.

Response: The purpose of Amendment 18 and its implementing regulations is to optimize the yield of the North Pacific swordfish stock and supply a sustainable source of domestic seafood. To do this, the fishery impacts were analyzed for an appropriate number of interactions that will not jeopardize the continued existence of ESA listed species. While the 2008 BiOp determined that incidentally taking 19 leatherback turtles annually will not jeopardize the continued existence of this species, NMFS took a precautionary approach in regards to acknowledged declines of monitored portions of the Western Pacific leatherback population. Therefore, the 2008 BiOp authorized the interaction limit equal to the current limit of 16 leatherbacks. See also the responses to Comments 67 and 68.

Comment 71: NMFS should retain the existing leatherback and loggerhead sea turtles regulations, because they are critical to the species viability.

Response: All measures currently applicable to the fishery will remain in place, including limited access. The Hawaii longline fishery is limited to 164 permits. In any given year about 120–130 vessels are actively fishing, with about 30 of those in the shallow-set fishery. The limit on the number of vessels remains unchanged with the removal of the effort limitations. Other requirements that remain in place include vessel and gear marking requirements, vessel length restrictions, Federal catch and effort logbooks, large longline restricted areas around Hawaii, vessel monitoring system (VMS), annual protected species workshops, and the use of sea turtle, seabird, and marine mammal handling and mitigation gear and techniques. NMFS will also maintain 100–percent observer coverage.

Under this final rule, the interaction limit for leatherback turtles remains unchanged at 16. The Hawaii shallow-set longline fishery will be allowed to interact with (hook or entangle) no more than 46 loggerhead sea turtles, an increase from the current limit of 17. The interaction limit does not represent the upper limit of interactions that would avoid jeopardizing the continued existence of loggerhead sea turtles, but instead is the annual number of interactions anticipated to occur in the fishery.

Comment 72: Time-area closures and closures in areas with higher-risk temperature bands should be considered to reduce sea turtle bycatch.

Response: Implementation of time-area closures was thoroughly discussed and analyzed as a way to reduce the number of sea turtle interactions that may occur in the first quarter of each year while increasing annual fishery harvests. The Council recommended not implementing time-area closures because it was unknown whether the displaced fishing effort would be relocated to other areas or to other months, and what impacts this displacement would have on turtles and other protected species, and on catch rates of target fish. Although the loggerhead hard cap was reached in the first quarter of 2006, the 2008 data indicated that no loggerhead turtle interactions and one leatherback interaction occurred during the same time period. The difficulty in managing time-area closures based on largely transient ocean temperature bands, as well as the inherent uncertainty in predicting with reasonable confidence whether turtle interactions will occur at higher rates within these bands, make the benefits of time-area closures speculative in relation to the impacts on fishery yields. Moreover, the implementation of time-area closures deprives the agency of observational data that are helpful to understanding sea turtle distribution and behavior. The use of proven turtle mitigation measures and hard caps contained in the preferred alternative will provide appropriate protection to sea turtles.

Comment 73: The increase in fishing effort should be limited to relatively small increments to ensure that the fishery does not exceed the take of turtles and does not become overcapitalized.

Response: In the FSEIS, Alternatives 1B -1D were thoroughly discussed and analyzed as increases of allowable sets per year (Alt 1B- Allow up to 3,000 sets per year; Alt - 1C Allow up to 4,240 sets per year; Alt 1D - Allow up to 5,500 sets per year; Alt - 1E Set effort to be commensurate with North Pacific swordfish stock at approximately 9,925 sets per year). The final rule implements Alternative 1F, which will remove the set limit and allow optimum yield to be achieved from the shallow-set fishery. Fishing effort may increase gradually to historical levels.

Because the Hawaii-based longline fisheries (shallow-set and deep-set) are regulated under a limited entry program (maximum 164 permits combined), it is likely the fishery will not be overcapitalized in the future. The Hawaii shallow-set fishery has 100 percent observer coverage, so NMFS is able to monitor the precise number of individual turtles that interact with the fishery. If or when an annual interaction limit is reached, the shallow-set longline fishery will be closed north of the Equator beginning on a specified date until the end of the calendar year. Further, in the event that either annual interaction limit is exceeded, NMFS will lower the following year's interaction limit by the amount it was exceeded.

Comment 74: The EPA's review recommended time-area closures and chastised the agency for not doing so as part of a preferred option in the DSEIS.

Response: The EPA comment letter consisted of a recommendation to investigate time-area closures as a research component of the proposed action: ''EPA recommends the issue of time-area closures be explored as a research component of the proposed action, and that this possibility be discussed in the FSEIS.'' See Comment 72 for time-area closure response.

Comment 75: Until estimates of stock status are more certain, the Scientific Committee (SC) of the WCPFC recommended no increase in fishing effort on swordfish.

Response: The North Pacific stock of swordfish is healthy and currently fished below MSY. The final rule allows an increased sustainable harvest of swordfish, while minimizing bycatch, including protected species from reaching an overfished or jeopardy state. Perhaps of more relevance than the recommendations of the WCPFC's SC are the decisions of the WCPFC itself, some of which are binding on its members, including the United States. The WCPFC has not adopted any

conservation and management measures specifically for swordfish in the North Pacific. However, WCPFC Conservation and Management Measure 2008–05, which focuses on and establishes measures for swordfish in the southwestern Pacific Ocean, is binding on WCPFC members and states that [WCPFC members] ''shall not shift their fishing effort for swordfish to the area north of 20° N, as a result of this measure.'' The phrase ''as a result of this measure'' refers to limits on the number of fishing vessels that are used to fish for swordfish and on swordfish catches in the WCPFC Convention Area south of 20° S. In other words, it calls for WCPFC members to ensure that fishing effort for swordfish by their vessels in the WCPFC Convention Area south of 20° S. not shift to the area north of 20 N.

In 2009, after adoption of WCPFC Conservation and Management Measure 2008–05, the International Scientific Committee for Tunas and Tuna-Like Species in the North Pacific Ocean (SSC), which provides scientific advice to the WCPFC for stocks in the North Pacific Ocean, completed a stock assessment for swordfish in the North Pacific Ocean. The SSC concluded that the North Pacific WCPO and EPO stocks of swordfish are healthy and well above the level required to sustain current catches.

Comment 76: Expansion of Hawaii shallow-set fishery uses unsustainable fishing practices and should be scaled back to preserve and protect sea turtles.

Response: NMFS and the Council are responsible for managing the living marine resources of the U.S.A. The best available scientific information indicates that this action (which continues proven sea turtle and seabird mitigation measures and 100 percent observer coverage) will not jeopardize the continued existence and recovery of any ESA-listed species, will not impact the conservation of marine mammal or seabird species, and will not result in overfishing or overfished conditions for any target or non-target stocks. Since the shallow-set longline fishery reopened in 2004, the fishery has reduced its bycatch of protected species from historical levels, and continues to be subject to a suite of bycatch mitigation measures and gear restrictions. All fish stocks will continue to be monitored according to their MSY, and the sea turtle interaction limits will help ensure that the survival and recovery of sea turtles will continue. This final rule allows the Hawaii shallow-set fishery to sustainably harvest the North Pacific swordfish stock, while minimizing bycatch and associated mortality. See also the response to Comment 70.

Comment 77: Another way must be available to catch the swordfish, and only the swordfish.

Response: Swordfish are managed under the Pelagics FMP, which authorizes the following gear types: bandit gear, buoy gear, handline, hook-and-line, rod-and-reel, spear, purse seine, lampara net, and longline (50 CFR 600.725). While some of these gear types can be highly selective, none have been identified as being able to single out swordfish from other fish and bycatch species. NMFS continues to research fishing methods that reduce bycatch and improve catch rates of target species.

Comment 78: The proposed expansion would allow 4 million or more deadly hooks to be set in the ocean that are certain to accidentally catch and harm leatherbacks, loggerheads, humpback whales, false killer whales, seabirds, and several types of fish.

Response: See the responses to Comments 1 and 2 for why the final rule would not jeopardize sea turtles, and Comments 7 and 8 for the conditions of fish stocks. The responses to Comments 16 and 49 address marine mammal interactions, and the response to Comment 26 and 58 for continuing seabird protections.

Comment 79: This action is in direct violation of the very principles that NOAA has been given the duty to uphold.

Response: This final rule is consistent with the Magnuson-Stevens Act, under which the Secretary of Commerce approved Amendment 18. NMFS is responsible for enabling domestic fisheries to attain optimal yield for the benefit of the Nation, while ensuring that living marine resources are conserved and managed in a way that ensures their continuation as functioning components of marine ecosystems.

Comment 80: Consideration was inadequate of cumulative impacts (e.g., climate change, collisions with vessels, entanglement in other fisheries, non-target species, habitat loss, beach erosion, animal and human predation, pollution, plastics, disease, and others) that pose jeopardy to ESA listed species in both the EEZ and other portion of the species' range.

Response: Both the FSEIS and the 2008 BiOp considered a wide array of cumulative effects on sea turtles, marine mammals, seabirds, and target and non-target fish stocks. The action area subject to the cumulative effects analysis of this Federal action is a section of the North Pacific Ocean, and does not include the continuation of activities described under the Environmental Baseline outside the action area (see response to Comment 30 for more on effects analysis). The 2008 BiOp includes cumulative effects in the analysis of the 2008 ITS for the Hawaii shallow-set fishery, future actions, and a list of U.S. Pacific Fisheries with sea turtle ITS.

Cumulative effects on the ESA-listed humpback whales, loggerhead, leatherback, olive ridley, green, and hawksbill sea turtles are likely to occur as a result of worsening climate change, and any increase in the fishing, ship traffic, and other actions. However, since the extent of climate change, and increases in fishing, ship traffic, and marine debris, are unquantifiable, the corresponding effects are also unquantifiable. Cumulative effects have been considered and will continue to be part of the environment affecting sea turtles and the longline fishery that must be addressed through adaptive management regardless of which alternative is selected for implementation.

Comment 81: Due to the lack of monitoring across fishing fleets, longline bycatch in other fisheries, juvenile loggerhead impacts, injuries, and other stressors, it would seem difficult for NMFS to ensure that the direct and indirect effects of this proposed action, in addition to activities outside the action area, will not pose jeopardy to the loggerhead.

Response: See the response to Comment 46 for how cumulative impacts were considered in the 2008 BiOp.

Comment 82: The scope of injury assessed to these ESA-listed animals in the BiOp should be broadened beyond the action area.

Response: See the response to Comment 46 for components of the 2008 BiOp. The environmental baseline for a biological opinion includes the past and present impacts of all state, Federal or private actions and other human activities in the action area, and for further clarity the environmental baseline is ''an analysis of the effects of past and ongoing human and natural factors leading to the current status of the species, its habitat (including designated critical habitat), and ecosystem, within the action area.'' (USFWS & NMFS 1998). The purpose of describing the environmental baseline in this manner in a biological opinion is to provide the context for the effects of the action on the listed species.

Comment 83: NMFS acknowledges that take of albatross species occurs in this fishery, but continues to deny that this take occurs outside the jurisdiction of the MBTA.

Response: See response to Comment 57 for MBTA applicability to this final rule.

Changes From the Proposed Rule

No changes were made from the proposed rule.

Classification

The Administrator, Pacific Islands Region, NMFS, determined that this final rule is necessary for the conservation and management of the pelagic shallow-set longline fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

An FSEIS for this action was filed with the Environmental Protection Agency. A notice of availability of the FSEIS was published on April 10, 2009 (74 FR 16388). In approving the Amendment 18 on June 17, 2009, NMFS issued a record of decision (ROD) identifying the selected alternative. A copy of the ROD is available from William L. Robinson, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. The action provides additional opportunities for Hawaii-based shallow-set longline fishermen to fish for swordfish while continuing to conserve protected species. Removing the effort limitations, and set certificate program, would increase fishing effort, but would not exceed MSY or contribute to overfishing of swordfish and other fish species. The action would not have adverse conservation and recovery impacts on loggerhead or leatherback sea turtles. The action is not likely to cause significant adverse effects to marine mammals, migratory birds, essential fish habitat, or habitat areas of particular concern. The complete analysis of the alternatives is contained in Amendment 18 and final SEIS, and is not repeated here. The environmental analytical documents are available from *www.regulations.gov* and the Council (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA and NMFS responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this rule. There are no disproportionate economic impacts from this rule based on home port, gear type, or relative vessel size. There are no recordkeeping, reporting, or other compliance costs associated with this rulemaking. In the absence of relevant cost data, gross revenue is used as proxy for profitability. There were no comments received on the IRFA during the comment period.

Description and estimate of the number of small entities to which the rule applies

About 30 active Hawaii-based swordfish longline vessels and an indeterminate number of non-active permit holders may be affected by this rulemaking. Between 2005 and 2007, 29 to 37 vessels participated in the shallow-set longline fishery for swordfish. The average revenue earned by vessels from participating in the shallow-set swordfish fishery in 2005 through 2007 was $225,227. In addition it is believed that the majority of participants are also active in the deep-set longline fishery during the course of a year; thus, their shallow-set revenues represent one portion of their total revenue. In 2007, the overall average (combined deep-set and shallow-set longline fisheries) ex-vessel revenue was $62.6 million realized by a total of 129 active vessels. On a per-vessel basis, this yields an average ex-vessel revenue of $486,039 per vessel, still far below the $4.0 million threshold. Therefore, all vessels are considered to be small entities under the definition provided by the Small Business Administration (SBA) as follows: any fish-harvesting business is a small business if it is independently owned and operated and not dominant in its field of operation and has annual receipts not in excess of $4.0 million.

Economic Impacts

Alternative 1–F will have no adverse economic impact on the 30 individual vessels comprising the fishery. In 2007, 29 vessels made 1,497 sets, and the 27 vessels fishing in 2008 made 1,587 sets. Since the fishery had reopened in 2004, it has never approached the current cap of 2,120 sets. Therefore, this rule would lift a constraint that has not been historically tested by the present participants in the fishery. The elimination of the cap, accordingly, would be expected to have no economic impact on the 30 participants in the fishery. In the long term, removal of the set limit is expected to allow for the entry of new vessels into the fishery thus increasing available rents to the fishery as a whole. This is discussed in length in the Regulatory Impact Review (see **ADDRESSES**).

Since the fishery has been closed as a result of reaching the current loggerhead cap, the increase in allowable turtle interactions for loggerheads would theoretically translate to a potential increase in gross revenues and vessel profitability that could be measured by comparing the total revenues associated with the old interaction cap and the total revenues associated with the new interaction cap. The reduction in allowable leatherback interactions, however, would theoretically have no economic impact to the fishery in the short run since historically the leatherback cap of 16 has not been reached. However, data on the relationship between turtle interactions and catch is not reliable because of the newness of the managed fish and the lack of data points. Therefore, those economic impacts would be indeterminate in the short term.

Alternative 2–B, the removal of the requirement for set certificates, will have a minimal yet positive impact on individual vessel owners that would have needed additional certificates to prosecute the fishery. The gross revenue derived from a set averages approximately $5,000, and the sale of set certificates by those owning a limited access permit has been reported by industry to be between $50 and $100, or 2 to 3 percent of gross revenue per set. This would reflect a cost savings to the vessel and an enhancement of profitability. Alternatively, those that have historically sold their certificates in lieu of fishing could lose $50 to $100 dollars per set per year. The private sale of certificates has not been tracked by NMFS due to privacy considerations and the lack of any legal requirements to do so. However, if we assume that opportunities outside of shallow-set longline fishing equal or exceed profits that could be obtained by using their certificates to fish, the adverse impact to these permit holders would be 3 percent or less. Alternative 3–A will have no impact on the fishery.

Steps Taken by the Agency to Minimize Economic Impact

There are no significant alternatives to this rulemaking that would have a less adverse or more beneficial economic impact than the preferred. All other alternatives considered regarding number of sets allowed, including the no-action alternative, are expected to have no adverse economic impact to the present participants in the fishery. The no-action alternative for elimination of set certificates would have no economic impact vis-a-vis the present fishery and permit holders selling certificates. Since there are no adverse impacts to small entities resulting from this rule, NMFS did not take steps to minimize economic impact.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency must explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared, and will be sent to all Hawaii-based pelagic longline vessels. In addition, copies of this final rule and guide at *www.fpir.noaa.gov/SFD/SFD_regs_2.html*

A formal section 7 consultation under the ESA was conducted for Amendment 18 on the effects of the action on ESA-listed marine species. In a Biological Opinion dated October 15, 2008, NMFS determined that fishing activities under Amendment 18 and its implementing regulations may affect, but are not likely to adversely affect, seven ESA-listed

species (Hawaiian monk seal, and blue, fin, sei, sperm, and North Pacific Right whales). NMFS also determined that the action may affect, and is likely to adversely affect, six other ESA-listed marine species that occur in the action area (humpback whale, and loggerhead, leatherback, olive ridley, green, and hawksbill sea turtles). This final rule is consistent with the October 2008 Biological Opinion's Reasonable and Prudent Measures and Terms and Conditions.

Additionally, an informal consultation was conducted under section 7 of the ESA with the U.S. Fish and Wildlife Service (USFWS) on the effects of the final rule on the endangered short-tailed albatross. The USFWS concurred with the NMFS determination that the action is not expected to result in a significant impact on short-tailed albatross during the first year after the rule is implemented.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, International fishing and related activities.

50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian Natives, Northern Mariana Islands, Pacific remote island areas, Reporting and recordkeeping requirements.

Dated: December 04, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR chapters III and VI are amended as follows:

CHAPTER III

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for 50 CFR part 300, subpart B, continues to read as follows:

Authority: 16 U.S.C. 5501 *et seq.*

■ 2. In § 300.17, revise paragraph (b)(1)(v) to read as follows:

§ 300.17 Reporting.

* * * * *

(b) * * *

(1) * * *

(v) Pacific Pelagic Longline Longline Logbook (§ 665.14(a) of this title);

* * * * *

CHAPTER VI

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 3. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 665.12 [Amended].

■ 4. In § 665.12, remove the definition of ''Shallow-set certificate.''

■ 5. In § 665.22, remove and reserve paragraphs (bb), (gg), and (hh), and revise paragraph (jj) to read as follows:

§ 665.22 Prohibitions.

* * * * *

(jj) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 665.21 north of the Equator (0° lat.) with hooks other than circle hooks sized 18/0 or larger, with an offset not to exceed 10 degrees, in violation of § 665.33(f).

* * * * *

■ 6. In § 665.32,

■ a. Revise paragraphs (a)(1) and (a)(2);

■ b. Redesignate paragraphs (a)(5) and (a)(6) as paragraphs (a)(6) and (a)(7), respectively;

■ c. Add new paragraph (a)(5);

■ d. Revise introductory text to newly-redesignated paragraphs (a)(7)(ii) and (a)(7)(iii);

■ e. Add new paragraph (a)(7)(iii)(C);

■ f. In newly-redesignated paragraph (a)(7), redesignate (a)(7)(iv), (a)(7)(vii), (a)(7)(viii), (a)(7)(ix), and (a)(7)(x) as new paragraphs (a)(8), (a)(9), (a)(10), (a)(11), and (a)(12), respectively; and

■ g. In newly-redesignated paragraph (a)(7), redesignate paragraph (a)(7)(v) as paragraph (a)(7)(iv), and redesignate paragraph (a)(7)(vi) as paragraph(a)(7)(v).

The revisions and additions read as follows:

§ 665.32 Sea turtle take mitigation measures.

(a) * * *

(1) *Hawaii longline limited access permits.* Any owner or operator of a vessel registered for use under a Hawaii longline limited access permit must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting minimum design and performance standards specified in paragraph (a)(7) of this section.

(2) *Other longline vessels with freeboards of more than 3 ft (0.91 m).* Any owner or operator of a longline vessel with a permit issued under § 665.21 other than a Hawaii limited access longline permit and that has a freeboard of more than 3 ft (0.91 m) must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting the minimum design and performance standards specified in paragraph (a)(7) of this section.

* * * * *

(5) *Line clippers.* Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper (ALC) is a model line clipper that meets these minimum design standards and may be fabricated from readily available and low-cost materials (see Figure 1 to this section). The minimum design standards are as follows:

(i) *A protected cutting blade.* The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(ii) *Cutting blade edge.* The blade must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(iii) *An extended reach handle for the cutting blade.* The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(iv) *Secure fastener.* The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

* * * * *

(7) * * *

(ii) *Long-handled dehooker for external hooks.* This item is intended to be used to remove externally-hooked hooks from sea turtles that cannot be brought aboard. The long-handled dehooker for ingested hooks described in paragraph (a)(7)(i) of this section meets this requirement. The minimum design and performance standards are as follows: * * *

* * * * *

(iii) *Long-handled device to pull an ''inverted V''.* This item is intended to be used to pull an ''inverted V'' in the fishing line when disentangling and dehooking entangled sea turtles. One long handled device to pull an ''inverted V'' is required on the vessel. The minimum design and performance standards are as follows: * * *

* * * * *

(C) The long-handled dehookers described in paragraphs (a)(7)(i) and (ii) of this section meet this requirement.

* * * * *

■ 7. In § 665.33, remove and reserve paragraphs (a), (c), and (e), and revise paragraphs (b) and (f) to read as follows:

§ 665.33 Western Pacific longline fishing restrictions.

* * * * *

(b) *Limits on sea turtle interactions.* (1) Maximum annual limits are established on the number of physical interactions that occur each calendar year between leatherback and loggerhead sea turtles and vessels registered for use under Hawaii longline limited access permits while shallow-setting.

(i) The annual limit for leatherback sea turtles (*Dermochelys coriacea*) is 16, and the annual limit for loggerhead sea turtles (*Caretta caretta*) is 46.

(ii) If any annual sea turtle interaction limit in paragraph (b)(i) of this section is exceeded in a calendar year, the annual limit for that sea turtle species will be adjusted downward the following year by the number of interactions by which the limit was exceeded.

(iii) No later than January 31 of each year the Regional Administrator will publish a notice in the **Federal Register** of the applicable annual sea turtle interaction limits established pursuant to paragraphs (b)(i) and (b)(ii) of this section.

* * * * *

(f) Any owner or operator of a vessel registered for use under any longline permit issued under § 665.21 must use only circle hooks sized 18/0 or larger, with an offset not to exceed 10 degrees, when shallow-setting north of the Equator (0° lat.). As used in this paragraph, an offset circle hook sized 18/0 or larger is one with an outer diameter at its widest point no smaller than 1.97 inches (50 mm) when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). As used in this paragraph, the allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

* * * * *

[FR Doc. E9–29444 Filed 12–9–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0907301200–91412–03]

RIN 0648–AY07

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; 2010 Harvest Specifications and Management Measures for Petrale Sole

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises the 2010 Optimum Yield and the January-December 2010 management measures for petrale sole taken in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California.

DATES: Effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail *gretchen.arentzen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register**'s Website at http://www.gpoaccess.gov/fr/index.html. Background information and documents are available at the Pacific Fishery Management Council's (the Council or PFMC) website at *http://www.pcouncil.org/*. An Environmental Assessment (EA) was prepared for the proposals to revise the 2009–2010 harvest specifications and management measures for petrale sole and canary rockfish. A copy of the EA is available online at *http://www.nwr.noaa.gov/*.

Background

The 2009 and 2010 Acceptable Biological Catches (ABCs), Optimum Yields (OYs) and Harvest Guidelines (HGs) for Pacific coast groundfish species were established in the final rule for the 2009–2010 groundfish harvest specifications and management measures (74 FR 9874, March 6, 2009). On September 11, 2009, NMFS proposed taking interim measures for two species of groundfish petrale sole and canary rockfish - during 2009 and 2010 (74 FR 46714). Those changes were proposed because the PFMC received new stock assessments of those species in June 2009 that indicated the stocks are in worse shape than had been thought at the beginning of 2009. On November 4, 2009, NMFS published the first of two final rules to implement a portion of the action described in the proposed rule; specifically, more restrictive management measures to reduce petrale sole catches in 2009 (74 FR 57117). This final rule implements another portion of the September 2009 proposed action for the year 2010 regarding petrale sole. These changes were considered and recommended by the Council at its November 2009 meeting in Costa Mesa, California. This final rule does not implement any changes to 2010 harvest specifications or management measures for canary rockfish (see Changes From the Proposed Rule).

This final action is taken to respond to the most recently available stock status information regarding petrale sole. The interim measures being implemented in this rule, in combination with the existing regulations, are designed to speed the rebuilding of petrale sole while NMFS and the Council complete the stock assessments, revised rebuilding plans, Environmental Impact Statement (EIS), and full rulemaking for the 2011 and 2012 specifications and management measures for the entire groundfish fishery.

The Council's policies on setting ABCs, OYs, other harvest specifications, and management measures are discussed in the preamble to the December 31, 2008, proposed rule (73 FR 80516) for 2009–2010 harvest specifications and management measures. The routine management measures, as described in the 2009–2010 proposed rule, will continue to be adjusted as necessary to modify fishing behavior during the fishing year to allow a harvest specification to be achieved, or to prevent a harvest specification from being exceeded.

Additional information regarding considerations for interim changes to 2010 harvest specifications and management measures for petrale sole can be found in the preamble to the September 2009 proposed rule (74 FR 46714).

Comments and Responses

NMFS received two letters of comment during the comment period for the proposed rule. The first was from the Department of the Interior, stating that it had no comment. The second was from Oceana, an environmental advocacy group, concerning the most

recent petrale sole stock assessment and biological reference points, and supporting interim measures to reduce petrale sole catch. Specifically, Oceana recommended greatly reducing trip limits for Periods 5 and 6, closing the petrale sole cutouts (areas that are left open to fishing for petrale sole under the ''no action'' alternative) in the Rockfish Conservation Area (RCA), and reducing coastwide petrale sole catch levels for 2009 and 2010. This rulemaking only addresses the interim changes to petrale sole management in 2010 (a prior rule addressed the changes for 2009). Consistent with Oceana's recommendation, NOAA is reducing trip limits for the entire year and reducing coastwide petrale sole catch levels for 2010. NOAA is not closing the petrale sole cutouts in the RCA, because as explained below, the year-round reduction in trip limits keeps the fishery under the 2010 OY without the need for the closure of these petrale sole fishing areas. Oceana's comments primarily focused on biological reference points for petrale sole that the Council considered at its November 2009 meeting. NMFS forwarded Oceana's letter of comment to the Council, and those comments were considered prior to the Council's November 2009 recommendation. The Council made recommendations on the biological reference points for petrale sole and the petrale sole rebuilding analysis for the 2011–2012 specifications and management measures. The measures and the rebuilding plan will be developed, reviewed and implemented through the 2011–1012 implementation process as described above. Final action is not being taken on those measures in this rule, and Oceana's comments will be considered during the relevant rulemaking.

Changes from the Proposed Rule

The proposed rule included changes to management measures that would reduce the catch of petrale sole in November-December 2009. That portion of the proposed action was implemented in a separate final rule that became effective on November 1, 2009, and which was published in the **Federal Register** on November 4, 2009 (74 FR 57117). The proposed rule included reductions to 2010 OYs for canary rockfish and petrale sole. It also included a description of management measures for canary rockfish and petrale sole that could be implemented to allow the fisheries to approach, but not exceed, new, lower, 2010 OYs. At its September meeting, the Council chose to postpone its final decisions for interim 2010 harvest specifications and management measures for petrale sole and canary rockfish in order to allow the new rebuilding analyses to be completed and considered prior to making its final recommendation. At its November meeting, the Council considered the rebuilding analyses and public comments prior to making its final recommendations. Therefore, this final rule addresses only the 2010 portion of the changes that were included in the proposed rule.

At its November 2009 meeting, the Council adopted the rebuilding analyses for petrale sole and canary rockfish for use in developing the 2011–2012 harvest specifications. These analyses were also considered in developing the interim specifications.

This final rule implements measures in 2010 to reduce catches of petrale sole that are very similar to the actions contained in the proposed rule. The petrale sole rebuilding analysis indicated a faster time to rebuild the stock with a 1,200 mt alternative OY, compared with the status quo (or ''no action'') alternative of a 2,393 mt 2010 OY. The proposed rule would set a 2010 petrale sole OY of 1,193 mt, which was calculated based on the Council request to reduce the 2010 OY by 1,200 mt. The rebuilding analysis the Council received in November analyzed five alternative OYs for 2010: the status quo of 2,393 mt; an OY of 1,800 mt; an OY of 1,200 mt (7 mt higher than the proposed 2010 OY); and two lower OYs of 900 and 300 mt, respectively. Therefore, the rebuilding analyses that the Council considered prior to making its final recommendation included a petrale sole OY alternative for 2010 of 1,200 mt, rather than 1,193 mt. After considering this analysis, the Council recommended a 2010 petrale sole OY of 1,200 mt, which is only slightly higher than the proposed OY. The rebuilding analysis the Council considered in the November 2009 meeting showed that this OY level in 2010 would rebuild the petrale sole stock approximately one year faster than the status quo alternative, and that it could allow less drastic OY reductions during the rebuilding period. Accordingly, this rule implements a reduced petrale OY for 2010 of 1,200 mt.

The final rule will also implement management measures for 2010 to limit the petrale sole harvest to the new petrale sole OY. The management measures implemented in this final rule were developed jointly with fishery managers and trawl industry representatives at the Council's November 2009 meeting. These final management measures are somewhat different from those in the proposed rule. The proposed rule contained severely reduced trip limits in January-February (Period 1) and November-December (Period 6), as well as additional area closures during those times. These measures were proposed to restrict the winter petrale sole effort by eliminating directed harvest of petrale during these periods, when fewer vessels are participating, and to maintain summer fishing opportunity, when the price per pound is higher and when more vessels are targeting petrale sole. At the November 2009 Council meeting, however, the Groundfish Management Team (GMT) considered other measures for keeping the harvest within the new OY. Based on a request from industry, the GMT developed an alternative that would keep the trip limit for petrale sole at 9,500 lbs per two-month period all year. Because this approach would allow a small target fishery all year, it would not include the changes to the closed areas that were in the proposed rule. Trawl industry representatives advised the GMT and the Council that the severe restriction of winter petrale opportunities, as proposed, could place communities at risk of losing vital fishing infrastructure during that time of year, and could place industry at risk of losing market share for petrale sole, thus reducing the market availability for the rest of the year. Therefore, the Council recommended a trip limit configuration that would restrict trip limits all year, holding the cumulative limit constant at 9,500 lb per two month period from January-December, and maintaining the RCA with the petrale cutouts (or fishing areas) in Periods 1 and 6. These management measures are anticipated to limit the 2010 petrale sole harvest to the 1,200 OY level. These measures, in combination with the existing regulations, are designed to speed the rebuilding of the petrale sole stock.

This final rule will not implement 2010 changes for canary rockfish as outlined in the proposed rule. In November, the Council considered interim changes for 2010 after consideration of the new rebuilding analysis. For canary rockfish, the rebuilding analysis compared 15 rebuilding alternatives in considering revisions to the canary rockfish rebuilding plan and developing the 2011–2012 harvest specifications. Only one of the rebuilding alternatives indicated a one-year difference in the time to rebuild canary rockfish stocks between the low 2010 OY alternatives (44 mt) and the status quo (no action) alternative (105 mt). For all of the other 14 rebuilding alternatives, there was no

change in time to rebuild between either of the low 2010 OY alternatives (44 and 85 mt) and the status quo alternative. None of the proposed canary rockfish catch reductions made an appreciable difference in canary rockfish rebuilding parameters, including time to rebuild, nor did it make an appreciable difference in 2011 and 2012 rebuilding OYs. Therefore, the proposed action did not meet the purpose and need that was described in the preamble of the proposed rule and in the Environmental Assessment. In addition, canary rockfish is a very important incidentally caught species that is widely encountered in both commercial and recreational fisheries, so that immediate reductions would have a far reaching effect. Accordingly, the Council did not recommend any changes to the 2010 canary rockfish OY of 105 mt or management measures to achieve a lower OY.

Classification

The Administrator, Northwest Region, NMFS, has determined that the revisions to 2010 harvest specifications and management measures for petrale sole, which this final rule implements, are consistent with the Magnuson-Stevens Act, 16 U.S.C. §§ 1801 *et seq.*, and other applicable laws.

An EA was prepared for the revisions to the 2009–2010 harvest specifications and management measures for petrale sole and canary rockfish. A copy of the EA is available online at *http://www.nwr.noaa.gov/*. NMFS issued a Finding of No Significant Impact (FONSI) for this action. A copy of the FONSI is available from NMFS (see **ADDRESSES**).

NMFS utilizes the most recently available fishery information, scientific information, and stock assessments, to implement specifications and management measures biennially. Generally these management measures are implemented on January 1 of odd numbered years. The 2009–2010 biennial specifications and management measures were developed using the most recently available scientific information, stock assessments, and fishery information available at the time of drafting, and were implemented on March 1, 2009. A new, more pessimistic, stock assessment for petrale sole became available to the Council in June 2009.

In response to this assessment, the Council and NMFS took immediate action to reduce catches of petrale sole in order to facilitate rebuilding of the stock. The Council recommended, and NMFS published, a proposed rule on September 11, 2009, to, among other things, reduce harvest of petrale sole in 2010. The comment period for this proposed rule closed on October 13, 2009. At its October 31 through November 5 meeting, the Council made its final recommendations for changes to 2010 harvest specifications and management measures for petrale sole.

In order that this final rule reducing the 2010 petrale sole OY and adjusting management measures may become effective January 1, 2010, and thus protect the petrale sole in 2010, NMFS finds good cause to waive a portion of the 30 day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3). Leaving the unrevised 2010 OY and management measures that directly affect catch of petrale sole in place could cause harm to petrale sole, because those management measures are not based on the most current scientific information. The commercial fishery is managed with two-month cumulative limits, so even a short delay in effectiveness could allow the fleets to harvest the entire Period 1 (January-February) two-month limit before the new, more restrictive, measures are effective. Delaying the effectiveness of this rule would also be confusing to the public, because with delayed effectiveness this rule would change trip limits in the midst of the two-month January-February cumulative trip limit period. Finally, delaying the effectiveness of these measures could require more drastic action in 2010 and beyond to reduce petrale sole catch, including possible fishery closures, to make up for harvest that would be allowed under the current 2010 management measures. Thus, a delay in effectiveness could ultimately cause economic harm to the fishing industry and associated fishing communities. These reasons constitute good cause under authority contained in 5 U.S.C. 553(d)(3) to establish an effective date less than 30 days after date of publication.

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this final rule is not significant.

NMFS prepared a final Regulatory Flexibility Analysis (FRFA) as part of the regulatory impact review. Among other things, the FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**). To summarize the FRFA, per the requirements of 5 U.S.C. 604(a), most of the estimated 2,600 entities that harvest groundfish are considered small businesses under the RFA. Entities involved in the fishery that are not small businesses include the catcher vessels that also fish off Alaska, some shoreside processors, and all catcher-processors and motherships (fewer than 30) that are affiliated with larger processing companies or large international seafood companies. Under the status quo (no action) petrale sole alternative (P1), groundfish revenues in 2010 by the non-whiting trawl fleet (139 vessels) would be about $28 million. Under the interim measures in this final rule, the vessels in this fishery would collectively earn about $26 million in 2010. Between 30 and 35 of these vessels would see their revenues fall by more than 5 percent (see Tables 4–1 and 4–2 of the EA).

Although this final rule will reduce the overall take and per vessel take of petrale sole, the total reduction in the catch levels for all Pacific coast groundfish species for 2010 is relatively low. The measures being implemented in this rule, in combination with the existing regulations, are designed to speed the rebuilding of petrale sole and moderate the severity of future reductions in the petrale sole OY under a rebuilding plan. In order to mitigate the adverse effect of lower petrale sole catches in 2010, the Council recommended additional opportunities for trawlers to harvest Dover sole, chilipepper rockfish, shortspine and longspine thornyheads, slope rockfish, and sablefish in 2010, and these recommendations are under consideration by NOAA for implementation in a separate rulemaking. These are species where additional harvest amounts can be accommodated without exceeding an OY.

There are no reporting, recordkeeping or other compliance requirements in this final rule.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish fishery management plan (FMP) fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye

salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal Section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

On March 11, 2006, using this data, NMFS issued a Supplemental Biological Opinion that addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries, including the effects of these fisheries on Lower Columbia River coho, which were listed in 2005 (70 FR 37160, June 28, 2005). In its 2006 Supplemental Biological Opinion, NMFS concluded that incidental take of salmon in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Oregon Coastal coho were recently re-listed as threatened under the ESA (73 FR 7816, February 11, 2008). The 1999 Biological Opinion and 2006 Supplemental Biological Opinion both concluded that the bycatch of salmonids in the Pacific coast groundfish bottom trawl fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

The Southern Distinct Population Segment (DPS) of green sturgeon were also recently listed as threatened under the ESA (71 FR 17757, April 7, 2006). As a consequence, NMFS has reinitiated its Section 7 consultation on the PFMC's Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with sections 7(a)(2) and 7(d) of the ESA, the proposed action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

With regard to marine mammals, sea turtles, and seabirds, NMFS is reviewing the available data on fishery interactions. In addition, NMFS has begun discussions with Council staff on the process to address the concerns, if any, that arise from our review of the data.

Pursuant to Executive Order 13175, the interim changes to the 2010 petrale sole OY and the groundfish management measures for petrale sole were developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: December 7, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Table 2a, and footnote ''/k'' following Tables 2a through 2c, are revised to read as follows:

* * * * *

Table 2a. To Part 660, Subpart G-2010, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC			
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreation-al
ROUNDFISH:									
Lingcod c/									
N of 42 N. lat.	4,058		771			4,829	4,829		
S of 42 N. lat.									
Pacific Cod e/	3,200		d/			3,200	1,600		
Pacific Whiting f/	f/					f/	134,773 - 404,318		
Sablefish g/									
N of 36 N. lat.	9,217					9,217	6,471		
S of 36 N. lat.							1,258		
Cabezon h/									
S of 42 N. lat.	d/		86		25	111	79		
FLATFISH:									
Dover sole	28,582					28,582	16,500		
English sole j/	9,745					9,745	9,745	-	
Petrale sole k/	1,514		1,237			2,751	1,200	-	
Arrowtooth flounder l/	10,112					10,112	10,112	-	
Starry Flounder m/	1,578					1,578	1,077		
Other flatfish n/	6,731					6,731	4,884	-	
ROCKFISH:									
Pacific Ocean Perch o/	1,173					1,173	200	198	

Species	ABC Specifications								
	ABC Contributions by Area					ABC	OY	HG b/	
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreational
Shortbelly p/	6,950					6,950	6,950		
Widow q/	6,937					6,937	509	447.4	7.2
Canary r/	940					940	44 - 105		
Chilipepper s/	d/			2,576		2,576	2,447	2,447	
Bocaccio t/	d/			793		793	288	206.4	67.3
Splitnose u/	d/			615		615	461		
Yellowtail v/	4,562			d/		4,562	4,562		
Shortspine thornyhead w/ N of 34 27' N. lat.	2,411					2,411	1,591	1,591	
S of 34 27' N. lat.							410		
Longspine thornyhead x/ N of 34 27' N. lat.	3,671					3,671	2,175		
S of 34 27' N. lat.							385		
Cowcod y/	d/			14		14	4		
Darkblotched z/	440					440	291	288.05	
Yelloweye aa/						32	17	3.1	8.0
California Scorpionfish bb/					155	155	155		
Black cc/ N of 46 16' N. lat.	464					464	464		
S of 46 16' N. lat.			1,317			1,317	1,000		

Species	ABC Specifications							OY	HG b/	
	ABC Contributions by Area						ABC		Commercial	Recreational
	Vancouver a/	Columbia	Eureka	Monterey	Conception					
Minor Rockfish dd/ N of 40 10' N. lat.	3,678			--			3,678	2,283		
Minor Rockfish ee/ S of 40 10' N. lat.	--			3,382			3,382	1,990		
Remaining	1,640			1,318						
bank ff/	d/			350						
blackgill gg/	d/			292						
blue	28			211						
bocaccio north	318			--						
chilipepper north	32			--						
redstripe	576			d/						
sharpchin	307			45						
silvergrey	38			d/						
splitnose north	242			--						
yellowmouth	99			d/						
yellowtail	--			116						
gopher	d/			302						
Other rockfish hh/	2,038			2,066						
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:										
Longnose Skate ii/	3,269						3,269	1,349		
Other fish jj/	11,200						11,200	5,600		

* * * * *

/k A petrale sole stock assessment was prepared for 2005. In 2005 the petrale sole stock was estimated to be at 32 percent of its unfished biomass coastwide (34 percent in the northern assessment area and 29 percent in the southern assessment area). The 2010 ABC of 2,751 mt is based on the 2005 assessment with a F40% FMSY proxy. To derive the 2010 OY, the 40 10 harvest policy was applied to the ABC for both the northern and southern assessment areas. As a precautionary measure, an additional 25 percent reduction was made in the OY contribution for the southern area due to assessment uncertainty. As another precautionary measure, an additional 1,193 mt reduction was made in the coastwide OY due to preliminary results of the more pessimistic 2009 stock assessment. The coastwide OY is 1,200 mt in 2010.

* * * * *

■ 3. Tables 3 (North) and 3 (South) to part 660, subpart G are revised to read as follows:

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Table 3 (North) to Part 660, Subpart G -- 2010 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 111909

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 48°10' N. lat.	shore - modified[7/] 200 fm line[6/]	shore - 200 fm line[6/]	shore - 150 fm line[6/]		shore - 200 fm line[6/]	shore - modified[7/] 200 fm line[6/]
2	48°10' N. lat. - 45°46' N. lat.	75 fm line[6/] - modified[7/] 200 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - 150 fm line[6/]	100 fm line[6/] - 150 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - modified[7/] 200 fm line[6/]
3	45°46' N. lat. - 40°10' N. lat.			75 fm line[6/] - 200 fm line[6/]	100 fm line[6/] - 200 fm line[6/]		
	Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
4	**Minor slope rockfish[2/] & Darkblotched rockfish**	1,500 lb/ 2 months				4,000 lb/ 2 months	
5	**Pacific ocean perch**	1,500 lb/ 2 months					
6	**DTS complex**						
7	Sablefish						
8	large & small footrope gear	18,000 lb/ 2 months		22,000 lb/ 2 months	24,000 lb/ 2 months	27,000 lb/ 2 months	
9	selective flatfish trawl gear	5,000 lb/ 2 months	7,500 lb/ 2months		11,000 lb/ 2 months		
10	multiple bottom trawl gear[8/]	5,000 lb/ 2 months	7,500 lb/ 2months		11,000 lb/ 2 months		
11	Longspine thornyhead						
12	large & small footrope gear	22,000 lb/ 2 months					
13	selective flatfish trawl gear	3,000 lb/ 2 months	5,000 lb/ 2 months				3,000 lb/ 2 months
14	multiple bottom trawl gear[8/]	3,000 lb/ 2 months	5,000 lb/ 2 months				3,000 lb/ 2 months
15	Shortspine thornyhead						
16	large & small footrope gear	17,000 lb/2 months					
17	selective flatfish trawl gear	3,000 lb/ 2 months					
18	multiple bottom trawl gear[8/]	3,000 lb/ 2 months					
19	Dover sole						
20	large & small footrope gear	110,000 lb/ 2 months					
21	selective flatfish trawl gear	40,000 lb/ 2 months	45,000 lb/ 2 months				40,000 lb/ 2 months

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
23	**Whiting**						
24	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.					
25	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
26	**Flatfish** (except Dover sole)						
27	Arrowtooth flounder						
28	large & small footrope gear	150,000 lb/ 2 months				180,000 lb/ 2 months	
29	selective flatfish trawl gear	90,000 lb/ 2 months					
30	multiple bottom trawl gear [8/]	90,000 lb/ 2 months					
31	Other flatfish [3/], English sole, starry flounder, & Petrale sole						
32	large & small footrope gear for Other flatfish [3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.				110,000 lb/ 2 months
33	large & small footrope gear for Petrale sole	9,500 lb/ 2 months					9,500 lb/ 2 months
34	selective flatfish trawl gear for Other flatfish [3/], English sole, & starry flounder	90,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.					
35	selective flatfish trawl gear for Petrale sole						
36	multiple bottom trawl gear [8/]	90,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.					
37	**Minor shelf rockfish [1/], Shortbelly, Widow & Yelloweye rockfish**						
38	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
39	large & small footrope gear	300 lb/ 2 months					
40	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
41	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month

TABLE 3 (North) con't

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
42	**Canary rockfish**						
43	large & small footrope gear	CLOSED					
44	selective flatfish trawl gear	100 lb/ month		300 lb/ month		100 lb/ month	
45	multiple bottom trawl gear 8/	CLOSED					
46	**Yellowtail**						
47	midwater trawl	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
48	large & small footrope gear	300 lb/ 2 months					
49	selective flatfish trawl gear	2,000 lb/ 2 months					
50	multiple bottom trawl gear 8/	300 lb/ 2 months					
51	**Minor nearshore rockfish & Black rockfish**						
52	large & small footrope gear	CLOSED					
53	selective flatfish trawl gear	300 lb/ month					
54	multiple bottom trawl gear 8/	CLOSED					
55	**Lingcod** 4/						
56	large & small footrope gear	1,200 lb/ 2 months		4,000 lb/ 2 months			
57	selective flatfish trawl gear			1,200 lb/2 months			
58	multiple bottom trawl gear 8/						
59	**Pacific cod**	30,000 lb/ 2 months		70,000 lb/ 2 months			30,000 lb/ 2 months
60	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
61	**Other Fish** 5/	Not limited					

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart G -- 2010 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 111909

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	South of 40°10' N. lat.	100 fm line[6/] - 150 fm line[6/ 7/]					
	All trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA.						
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
2	**Minor slope rockfish[2/] & Darkblotched rockfish**						
3	40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months	15,000 lb/ 2 months	18,000 lb/ 2 months
4	South of 38° N. lat.	55,000 lb/ 2 months					
5	**Splitnose**						
6	40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months		15,000 lb/ 2 months
7	South of 38° N. lat.	55,000 lb/ 2 months					
8	**DTS complex**						
9	Sablefish	20,000 lb/ 2 months				27,000 lb/ 2 months	
10	Longspine thornyhead	22,000 lb/ 2 months					
11	Shortspine thornyhead	17,000 lb/ 2 months					
12	Dover sole	110,000 lb/ 2 months					
13	**Flatfish** (except Dover sole)						
14	Other flatfish[3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.				110,000 lb/ 2 months
15	Petrale sole	9,500 lb/ 2 months					9,500 lb/ 2 months
16	Arrowtooth flounder	10,000 lb/ 2 months					
17	**Whiting**						
18	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.					
19	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					

TABLE 3 (South)

Table 3 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
20	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**						
21	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month					
22	large footrope or midwater trawl for Chilipepper	5,000 lb/ 2 months			12,000 lb/ 2 months		
23	large footrope or midwater trawl for Widow & Yelloweye	CLOSED					
24	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month					
25	small footrope trawl for Chilipepper	5,000 lb/ 2 months			12,000 lb/ 2 months		
26	**Bocaccio**						
27	large footrope or midwater trawl	300 lb/ 2 months					
28	small footrope trawl	CLOSED					
29	**Canary rockfish**						
30	large footrope or midwater trawl	CLOSED					
31	small footrope trawl	100 lb/ month		300 lb/ month		100 lb/ month	
32	**Cowcod**	CLOSED					
33	**Bronzespotted rockfish**	CLOSED					
34	**Minor nearshore rockfish & Black rockfish**						
35	large footrope or midwater trawl	CLOSED					
36	small footrope trawl	300 lb/ month					
37	**Lingcod[4/]**						
38	large footrope or midwater trawl	1,200 lb/ 2 months		4,000 lb/ 2 months			
39	small footrope trawl			1,200 lb/ 2 months			
40	**Pacific cod**	30,000 lb/ 2 months		70,000 lb/ 2 months			30,000 lb/ 2 months
41	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
42	**Other Fish[5/] & Cabezon**	Not limited					

TABLE 3 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
5/ Other fish are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is an area closed to fishing by particulary gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. E9–29479 Filed 12–9–09; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 74, No. 236
Thursday, December 10, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1090; Directorate Identifier 2009–SW–31–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. This proposed AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that a metallurgical non-conformity was discovered on a flange of the forward shaft section of the tail rotor drive shaft (drive shaft). The MCAI AD also states that stress analysis has shown that this non-conformity can significantly reduce the strength of the drive shaft and thereby its service life. The proposed actions are intended to remove non-conforming drive shafts from service and prevent failure of the drive shaft and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by January 11, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.*

Examining the Docket: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations office between
9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone (800) 647–5527) is stated in the **ADDRESSES** section of this proposal. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written data, views, or arguments about this proposed AD. Send your comments to an address listed in the **ADDRESSES** section of this proposal. Include ''Docket No. FAA–2009–1090; Directorate Identifier 2009–SW–31–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

EASA has issued AD 2006–0100, dated April 24, 2006, to correct an unsafe condition for Eurocopter Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters with a drive shaft forward shaft section, part number 355A 34–1090–00, and a serial number from M858 (inclusive) up to M873 (inclusive). EASA advises of the discovery of a non-conformity in the metal of a flange of the drive shaft of an AS355 helicopter. EASA also advises that stress analysis has shown that this non-conformity may significantly reduce the strength and the service life of this component. The proposed AD is intended to remove non-conforming drive shafts from service and prevent failure of the drive shaft and subsequent loss of control of the helicopter. You may obtain further information by examining the MCAI AD and any related service information in the AD docket.

Related Service Information

Eurocopter has issued Alert Service Bulletin No. 01.00.51, Revision 1, dated February 9, 2006. The actions described in the MCAI AD are intended to correct the unsafe condition identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, their technical agent, has notified us of the unsafe condition described in the MCAI AD. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require removing any non-conforming drive shaft and replacing it with an airworthy drive shaft that is not included in the applicability of the AD.

Differences Between This Proposed AD and the MCAI AD

This AD would differ from the MCAI AD as follows:

• We refer to the compliance time as ''hours time-in-service'' rather than ''flying hours'' and

• We do not require returning spares to the manufacturer.

Costs of Compliance

We estimate that this proposed AD would affect about 96 helicopters of U.S. registry. We also estimate that it would take about 2 work-hours per helicopter to do the proposed actions. The average labor rate is $80 per work-hour. Required parts would cost about $8,335 per helicopter. Based on these figures, we estimate the cost of the proposed AD on U.S. operators would be $815,520, or $8,495 per helicopter, assuming that the drive shaft is replaced on each helicopter.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on product(s) identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, I certify this proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Eurocopter France: Docket No. FAA–2009–1090; Directorate Identifier 2009–SW–31–AD.

Comments Due Date

(a) We must receive your comments by January 11, 2010.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters with tail rotor drive shaft forward shaft section, part number 355A 34–1090–00, serial number 858 through 873 (inclusive) with a prefix ''M,'' certificated in any category. This AD does not apply to helicopters manufactured after January 1, 2005.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states that a metallurgical non-conformity was discovered on a flange of the forward shaft section of the tail rotor drive shaft (drive shaft). The MCAI AD also states that stress analysis has shown that this non-conformity can significantly reduce the strength of the drive shaft and thereby its service life. This AD is intended to remove non-conforming drive shafts from service and prevent failure of the drive shaft and subsequent loss of control of the helicopter.

Actions and Compliance

(e) Unless already accomplished, do the following:

(1) For any drive shaft that has less than 2,400 hours time-in-service (TIS), on or before reaching 2,500 hours TIS, remove the drive shaft and replace it with an airworthy drive shaft that is not included in the applicability of this AD.

(2) For any drive shaft with 2,400 or more hours TIS, within the next 100 hours TIS, remove the drive shaft and replace it with an airworthy drive shaft that is not included in the applicability of this AD.

Differences Between This AD and the MCAI AD

(f) This AD differs from the MCAI AD as follows:

(1) We refer to the compliance time as ''hours time-in-service'' rather than ''flying hours'' and

(2) We do not require returning spares to the manufacturer.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, ATTN: Uday Garadi, Aviation Safety Engineer, Regulations and Guidance Group, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) European Aviation Safety Agency (EASA) AD No. 2006–0100, dated April 24, 2006, and Eurocopter Alert Service Bulletin No. 01.00.51, Revision 1, dated February 9, 2006, contain related information.

Joint Aircraft System/Component (JASC) Code

(i) JASC Code 6510: Tail rotor drive shaft.

Issued in Fort Worth, Texas on November 23, 2009.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–29431 Filed 12–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1158; Directorate Identifier 2009–CE–063–AD]

RIN 2120–AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Model PC–12/47E Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an

aviation product. The MCAI describes the unsafe condition as:

> Field reports have indicated that the possibility exists that both Primary Flight Displays (PFDs) could indicate a roll attitude offset of up to 10 degrees in the same direction if an accelerated turn onto the active runway is performed immediately followed by take-off. In addition, annunciated heading splits have been reported. This condition has been reported to correct itself after several minutes.
>
> Additionally, if the aeroplane is operating in geographical latitudes with low horizontal magnetic field strength, incorrect heading may be displayed if the ADAHRS switches from GPS track to magnetometer heading while the aeroplane is on the ground.
>
> This situation, if not corrected, could result in an undesired bank angle, heading splits and/or incorrect heading, which would constitute an unsafe condition.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 25, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1158; Directorate Identifier 2009–CE–063–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On April 8, 2009, we issued AD 2009–08–10, Amendment 39–15883 (74 FR 17384, April 15, 2009). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2009–08–10, an updated air data, attitude, and heading reference system version with improved software was developed.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2009–0249, dated November 20, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Field reports have indicated that the possibility exists that both Primary Flight Displays (PFDs) could indicate a roll attitude offset of up to 10 degrees in the same direction if an accelerated turn onto the active runway is performed immediately followed by take-off. In addition, annunciated heading splits have been reported. This condition has been reported to correct itself after several minutes.
>
> Additionally, if the aeroplane is operating in geographical latitudes with low horizontal magnetic field strength, incorrect heading may be displayed if the ADAHRS switches from GPS track to magnetometer heading while the aeroplane is on the ground.
>
> This situation, if not corrected, could result in an undesired bank angle, heading splits and/or incorrect heading, which would constitute an unsafe condition.
>
> As a short-term interim measure, AD 2009–0028–E has been released in February 2009 to limit at 30° the bank angle during climb. Afterwards, as a result of the ongoing investigation, the problem has been temporarily addressed with some limitations in the take-off procedure. These limitations have been mandated by AD 2009–0080–E which superseded AD 2009–0028–E.
>
> In order to terminate the operational limitations, an updated ADAHRS version with improved software was developed.
>
> For the reasons described above this AD supersedes AD 2009–0080–E and mandates as a terminating action either an update of the ADAHRS software or the replacement of the ADAHRS unit. From MSN 1181 and subsequent an improved ADAHRS unit was implemented during production.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

PILATUS AIRCRAFT LTD. has issued PILATUS PC–12 Service Bulletin No: 34–022, dated October 5, 2009. Honeywell International Inc. has issued Service Bulletin KSG 7200–34–09, Revision 0, dated September 24, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 50 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to

comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $24,000, or $480 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15883 (74 FR 17384, April 15, 2009), and adding the following new AD:

PILATUS AIRCRAFT LTD.: Docket No. FAA–2009–1158; Directorate Identifier 2009–CE–063–AD.

Comments Due Date

(a) We must receive comments by January 25, 2010.

Affected ADs

(b) This AD supersedes AD 2009–08–10, Amendment 39–15883.

Applicability

(c) This AD applies to Models PC–12/47E airplanes, all manufacturer serial numbers (MSN), certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 34: Navigation.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Field reports have indicated that the possibility exists that both Primary Flight Displays (PFDs) could indicate a roll attitude offset of up to 10 degrees in the same direction if an accelerated turn onto the active runway is performed immediately followed by take-off. In addition, annunciated heading splits have been reported. This condition has been reported to correct itself after several minutes.

Additionally, if the aeroplane is operating in geographical latitudes with low horizontal magnetic field strength, incorrect heading may be displayed if the ADAHRS switches from GPS track to magnetometer heading while the aeroplane is on the ground.

This situation, if not corrected, could result in an undesired bank angle, heading splits and/or incorrect heading, which would constitute an unsafe condition.

As a short-term interim measure, AD 2009–0028–E has been released in February 2009 to limit at 30° the bank angle during climb. Afterwards, as a result of the ongoing investigation, the problem has been temporarily addressed with some limitations in the take-off procedure. These limitations have been mandated by AD 2009–0080–E which superseded AD 2009–0028–E.

In order to terminate the operational limitations, an updated ADAHRS version with improved software was developed.

For the reasons described above this AD supersedes AD 2009–0080–E and mandates as a terminating action either an update of the ADAHRS software or the replacement of the ADAHRS unit.

From MSN 1181 and subsequent an improved ADAHRS unit was implemented during production.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) For MSN 545 and MSN 1001 through MSN 1180, before further flight after April 20, 2009 (the effective date of AD 2009–08–10), incorporate PILATUS AIRCRAFT LTD. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook (POH), Report No. 02277, dated March 18, 2009, into the Pilatus PC–12/47E POH. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations 14 CFR 43.7 may do this action. Make an entry in the aircraft records showing compliance with this portion of the AD following 14 CFR 43.9.

(2) For MSN 545 and MSN 1001 through MSN 1180, within 180 days after the effective date of this AD:

(i) Update the air data, attitude, and heading reference system (ADAHRS) software following the accomplishment instructions of Honeywell International Inc. Service Bulletin KSG 7200–34–09, Revision 0, dated September 24, 2009; or

(ii) Replace ADAHRS unit KSG 7200 Honeywell Part Number (P/N) 065–00188–5102, Software Version MOD 02/02 (Pilatus P/N 985.99.12.192) with a new ADAHRS unit with Honeywell P/N 065–00188–5103 (Pilatus P/N 985.99.12.205) following the accomplishment instructions of PILATUS AIRCRAFT LTD. PILATUS PC–12 Service Bulletin No: 34–022, dated October 5, 2009.

(3) For MSN 545 and 1001 through 1180, before further flight after the actions required by paragraph (f)(2) of this AD, remove PILATUS AIRCRAFT LTD. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook, Report No. 02277, dated March 18, 2009.

(4) Do not install an ADAHRS unit with Honeywell P/N 065–00188–5102 (Pilatus P/N 985.99.12.192) on any affected Model PC–12/47E airplane, as follows:

(i) For MSN 545 and 1001 through 1180 airplanes, as of 180 days after the effective date of this AD; and

(ii) For all other MSNs, as of the effective date of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office,

FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2009–0249, dated November 20, 2009, PILATUS AIRCRAFT LTD. Temporary Revision No. 11 to PC–12/47E Pilot's Operating Handbook, Report No. 02277, dated March 18, 2009; Honeywell International Inc. Service Bulletin KSG 7200–34–09, Revision 0, dated September 24, 2009; and PILATUS AIRCRAFT LTD. PILATUS PC–12 Service Bulletin No: 34–022, dated October 5, 2009, for related information.

Issued in Kansas City, Missouri, on December 4, 2009.

William Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–29457 Filed 12–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1088; Directorate Identifier 2008–SW–76–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S–92A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the Sikorsky Model S–92A helicopters. The AD would require revising the Rotorcraft Flight Manual (RFM), Operating Limitations section, to make it clear to operators that this model helicopter was not certificated to the standards that allow for the carriage of human external cargo. This proposal is prompted by a mistake in the RFM, which allows ''Class D'' rotorcraft load combinations for human external cargo load (HEC) operations for this model. The Model S–92A RFM does not include the required one-engine inoperative (OEI) hover performance and procedures. The actions specified by the proposed AD are intended to correct the Limitations section of the RFM to prevent HEC operations, which could result in injury or loss of life.

DATES: Comments must be received on or before February 8, 2010.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com*, or at *http://www.sikorsky.com*.

FOR FURTHER INFORMATION CONTACT: John Coffey, Flight Test Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7173, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2009–1088, Directorate Identifier 2008–SW–76–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000.

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

This document proposes adopting a new AD for the Sikorsky Model S–92A helicopters. The AD would require revising the RFM SA S92A–RFM–003, Part 1, Section 1, Operating Limitations, Types of Operation, by removing the statement ''RESCUE HOIST: Category 'A' only External load operations with Class 'D' external loads.'' The AD would require replacing that statement with ''HOIST: Class D external loads PROHIBITED.'' Also, the AD would require revising the RFM by removing all instances of the terms ''RESCUE HOIST'' and replacing them with the term ''HOIST.'' This proposal is prompted by a review of the RFM, in which a mistake was discovered. The RFM states that ''Class D'' external loads are approved for external load operations for this model. However, the Model S–92A does not comply with the requirements of 14 CFR 29.865(c)(6) because, for HEC applications requiring use of Category A rotorcraft, that rotorcraft must have OEI hover performance and procedures in the RFM for the weights, altitudes and temperatures for which that external load approval is requested. The Model

S–92A RFM does not contain that information. For conducting external load operations under 14 CFR 133, the FAA has defined HEC to be a rotorcraft-load combination ''Class D'' operation. The actions in the proposed AD are intended to correct this mistake and to prevent HEC operation in noncompliance with the requirements, which could result in injury or loss of life.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require revising the RFM SA S92A–RFM–003 in accordance with the statements in the previous paragraph.

We estimate that this proposed AD would affect 65 helicopters of U.S. registry. Correcting the wording in the RFM would take a minimal amount of time resulting in minimal cost.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. Additionally, this proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Sikorsky Aircraft Corporation: Docket No. FAA–2009–1088; Directorate Identifier 2008–SW–76–AD.

Applicability: Model S–92A helicopters, certificated in any category.

Compliance: Required within 90 days, unless accomplished previously.

To correct a mistake in the Rotorcraft Flight Manual (RFM) to prevent human external cargo (HEC) operations, which could result in injury or loss of life, do the following:

(a) Revise the RFM SA S92A–RFM–003, Part 1, Section 1, Operating Limitations, Types of Operation, by removing the statement ''RESCUE HOIST: Category 'A' only External load operations with Class 'D' external loads.'' Replace that statement with ''HOIST: Class D external loads PROHIBITED.'' Also, throughout the entire RFM, remove the term ''RESCUE HOIST,'' and replace it with the term ''HOIST.'' These revisions may be made by inserting a copy of this AD into the RFM, by making the changes in pen and ink, or by inserting a copy of the Sikorsky RFM revision containing these requirements into the RFM.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, FAA, ATTN: John Coffey, Flight Test Engineer, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7173, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on October 23, 2009.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–29430 Filed 12–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0839]

RIN 1625–AA09

Drawbridge Operation Regulation; Bullards Ferry Bridge, Coquille River, Bandon, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily modify the drawbridge operation regulation for the U.S. Highway 101 Bullards Ferry Bridge that crosses over the Coquille River at mile 3.5 near Bandon, Oregon so that the vertical lift span would not need to open for ten months while the bridge is being painted. The proposed rule is necessary to ensure that the painting operation will not be disrupted by bridge openings. The bridge has not had to be opened for a vessel in seven years.

DATES: Comments and related material must reach the Coast Guard on or before February 8, 2010.

ADDRESSES: You may submit comments identified by the Coast Guard docket number USCG–2009–0839 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Austin Pratt, Chief, Bridge Section, Waterways Management Branch, Thirteenth Coast Guard District, telephone 206–220–7282, e-mail address *william.a.pratt@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking USCG–2009–0839, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver or mail your comment, it will be considered received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2009–0839'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0839'' and click ''Search''. Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request using one of the four methods under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed temporary rule would enable the Oregon Department of Transportation to permanently install debris containment on the U.S. Highway 101 Bullards Ferry Bridge that crosses over the Coquille River at mile 3.5 near Bandon, Oregon, including the vertical lift towers, while it is being painted. By keeping the drawspan closed, no part of this containment system would need to be dismantled during the painting operation.

Normally, the Coast Guard does not seek to authorize closures of this duration. However, the vertical lift span of this bridge has not been requested to open for a vessel in more than seven years. The recreational boating traffic that plies the Coquille River is able to pass under the lift span in its closed position. The span provides approximately 28 feet of clearance at high water and 35 feet at low. When open the draw span can provide more than 45 additional feet of clearance.

The operating regulations currently in effect for the bridge are found at 33 CFR 117.875. The regulation requires that at least two hours notice be given for all openings.

Discussion of Proposed Rule

The Coast Guard proposes to temporarily amend 33 CFR 117.875 by revising it to authorize the draw of the U.S. Highway 101 Bullards Ferry Bridge to remain closed from May 1, 2010 to March 1, 2011. The proposed rule would allow the bridge painting operation taking place during that time period to not be disrupted by bridge openings. The bridge will return to its normal operating schedule immediately at the end of the designated time period.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this finding based on the fact that the rule will have no known impact on the maritime public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because it will have no known impact on any vessel traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how, and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Austin Pratt, Chief, Bridge Section, Waterways Management Branch, Thirteenth Coast Guard District, at (206) 220–7282. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of Information and Regulatory Affairs has not designated this as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. From May 1, 2010 to March 1, 2011, temporarily suspend § 117.875 and temporarily add § 117.876T to read as follows:

§ 117.876T Coquille River

The draws of the U.S. 101 highway bridge, mile 3.5 at Bandon, Oregon, need not open for the passage of vessels from May 1, 2010 to March 1, 2011.

Dated: October 15, 2009.

G.T. Blore,

Rear Admiral, U.S. Coast Guard Commander, Thirteenth Coast Guard District.

[FR Doc. E9–29414 Filed 12–9–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 090206140–91419–04]

RIN 0648–AX39

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 29 Supplement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to supplement the regulations implementing Amendment 29 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). Amendment 29 established a multi-species individual fishing quota (IFQ) program for the grouper and tilefish component of the commercial sector of the reef fish fishery in the Gulf of Mexico (Gulf) exclusive economic zone. This proposed rule would remove several measures constraining harvest of shallow-water grouper species that were inadvertently not removed in the final rule for Amendment 29, further clarify existing criteria for approval of new landing locations for both the red snapper IFQ program and grouper and tilefish IFQ program, and provide a definition of ''offloading'' in the codified text for IFQ participants. This proposed rule also discusses two options considered by the Council. NMFS is seeking comment on one of these options, which would give IFQ fishermen the option to provide a headcount of the fish on board at the time of landing. The intent of this proposed rule is to enhance IFQ program enforcement capabilities, reduce confusion for IFQ participants offloading their fish, and allow for more efficient functioning of the IFQ programs for red snapper and groupers and tilefishes.

DATES: Written comments on this proposed rule must be received no later than 5 p.m., eastern time, on January 11, 2010.

ADDRESSES: You may submit comments, identified by ''0648–AX39,'' by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov*
- Fax: 727–824–5308, Attn: Susan Gerhart.
- Mail: Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov*, enter ''NOAA-NMFS–2008–0223'' in the keyword search, then select ''Send a Comment or Submission.'' NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 29, which includes a final environmental impact statement (FEIS), an initial regulatory flexibility analysis, and a regulatory impact review (RIR) may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813–348–1630; fax 813–348–1711; e-mail *gulfcouncil@gulfcouncil.org*; or may be downloaded from the Council's website at *http://www.gulfcouncil.org/*.

Copies of the final regulatory flexibility analysis (FRFA), and record of decision may be obtained from Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule may be submitted to Richard Malinowski, Southeast Regional Office, NMFS, and by e-mail to *David__Rostker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

On July 2, 2009, NMFS approved Amendment 29. Amendment 29 created an IFQ program for the grouper and tilefish component of the commercial sector of the Gulf reef fish fishery. A final rule implementing the amendment published on August 31, 2009 (74 FR 44732). This proposed rule includes three administrative measures that were not included in the final rule for Amendment 29. These administrative measures would allow for more efficient functioning of the grouper and tilefish IFQ program, reduce confusion among IFQ participants that are offloading their fish, and further enhance enforcement capabilities of the red snapper IFQ program and the IFQ program for groupers and tilefishes, as intended by the Council. This proposed rule also discusses two options considered by the Council at the October 2009 Council meeting. NMFS specifically invites comments in this proposed rulemaking on one of these options, namely a provision that would allow fishermen to provide a headcount of the fish on board at the time of landing.

Management Measures Contained in This Proposed Rule

Remove measures that constrain commercial harvest

Amendment 29 states, ''Approval and implementation of the IFQ program will result in the elimination of existing management measures intended to constrain commercial harvest, such as grouper trip limits.'' However, the trip limit and accountability measures (AMs) implemented in May 2009, through the final rule for Amendment 30B to the FMP (74 FR 17603, April 18, 2009), were inadvertently not removed in the final rule for Amendment 29. This proposed rule would remove the trip limit and AMs implemented through Amendment 30B to the FMP that constrain commercial harvest.

IFQ programs are intended to eliminate the need for trip limits so fishermen have the flexibility to fish when and where they want, thereby promoting safety at sea and reducing economic hardship. In the current regulations, the trip limit is defined as follows: if 80 percent of either the gag or the red grouper quota is reached, and 100 percent of the quota is projected to be reached prior to the end of the fishing year, a 200–lb (90.7–kg) trip limit will be implemented for the

applicable species. This proposed rule would remove this trip limit as it is no longer needed to constrain commercial harvest with the implementation of the grouper and tilefish IFQ program. Under the IFQ program, the rate of harvest would be controlled by the availability of individual fishing quotas.

The Magnuson-Stevens Act, re-authorized in 2006, requires that annual catch limits (ACLs) and AMs for stocks that are undergoing overfishing or are overfished be implemented by the end of 2010. The National Standard 1 guidelines define AMs as management controls to prevent ACLs, including sector ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur. The AMs implemented through Amendment 30B that constrain commercial harvest state: if 100 percent of any one of the three quotas (gag, red grouper, or shallow-water grouper) is reached, the entire shallow-water grouper sector of the commercial fishery will close for the remainder of the fishing year. The grouper and tilefish IFQ program was designed to act as an AM, in and of itself, by constraining harvest to individual fishing quotas. The IFQ program also requires any overage (as much as 10 percent of allocation remaining on the shareholder's last trip) to be deducted from the shareholder's allocation the subsequent fishing year. This provision acts as an AM by mitigating overages after they occur. Because the IFQ program itself acts as an AM and there are other AMs inherent in the IFQ program, the AMs included in Amendment 30B that constrain commercial harvest would be removed through this rulemaking.

The FEIS, FRFA, and RIR conducted for Amendment 29 adequately analyzed the impacts of the management measures proposed in this rule. Regulatory provisions in this rule were either inadvertently not included in the proposed and final rules for Amendment 29, or they provide greater specificity for provisions previously implemented through Amendment 29. The supporting regulatory analyses for Amendment 29 either specifically addressed the impacts of these measures, or analyzed associated impacts assuming these measures would also be implemented. Because no additional analysis is necessary to support the measures currently proposed, no such analysis was prepared.

Clarify landing location criteria

NMFS Office for Law Enforcement must approve landing locations prior to landing or offloading red snapper, groupers, or tilefishes. Proposed landing locations may be submitted at any time; however, new landing locations are approved only at the end of each calendar-year quarter. To have a landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. Current regulations state that landing locations must be publicly accessible by land and water, and a street address must be provided for a landing location. If there is no street address on record, then Global Positioning System coordinates must be provided.

To assist law enforcement in determining eligibility of landing locations submitted for review, more specific criteria would be established to provide greater clarification for the requirement that landing locations must be publicly accessible. These criteria would include, but are not limited to the following: the site must be accessible for vehicles via public roads; the site must be accessible for vessels via navigable waters; and no other condition may impede free and immediate access to the landing location, such as locked gates, guard dogs, or any other physical barrier. Any participant submitting a landing location request would be required to fill out a form on the IFQ website at ifq.sero.nmfs.noaa.gov. The form would include a series of questions regarding the landing location and its accessability. NMFS Office for Law Enforcement would include this form in their review to approve or disapprove proposed sites. Approved landing locations are posted on the IFQ website listed above.

Define offloading

The current regulations define ''landing'' specifically for the red snapper IFQ program and the IFQ program for groupers and tilefishes, however, ''offloading'' has not yet been defined in the regulations for IFQ participants. For the purposes of the red snapper IFQ program and the IFQ program for groupers and tilefishes, ''landing'' is defined as arriving at a dock, berth, beach, seawall, or ramp. This proposed rule would provide a definition of ''offloading'' for IFQ participants in the codified text. For the purposes of the red snapper IFQ program and the IFQ program for groupers and tilefishes, ''offloading'' would be defined as removing IFQ fish from a vessel.

Options considered by the Council

Provide a headcount as a means to estimate the IFQ fish onboard

Some fishermen who operate in the red snapper IFQ program and the IFQ program for groupers and tilefishes trailer their fish to the dealer. When IFQ fish are offloaded to a vehicle for transportation to a dealer or are trailered to a dealer, a transaction approval code must accompany those fish. The implementing regulations for Amendment 29 specify that an accurate weight must be submitted to complete a landing transaction to determine that the fisherman has sufficient allocation to cover the amount of fish landed. Therefore, the fishermen must have on-site capability to weigh their fish and connect electronically to the online IFQ system to complete the transaction and obtain a transaction approval code to transport these fish. At the October 2009 Council meeting, the Council voted to seek public comment on a provision that would give fishermen the option to provide a headcount of the fish on board at the time of landing, in lieu of reporting the weight. Reporting the weight of IFQ fish landed is considered to be an important component of monitoring the IFQ program and preventing overages. NMFS' preliminary determination is that providing a headcount instead of the weight at the time of landing would not allow for adequate monitoring and enforcement of the IFQ program. If fishermen were to provide a headcount at the time of landing, they would still need to connect electronically to the online IFQ system and obtain a transaction approval code (using the headcount) to transport those fish to the dealer. When they offload their fish at the dealer location, the accurate weight would then need to be updated under the same transaction approval code (replacing the headcount) to complete that transaction. NMFS invites comments on this option, particularly whether fishermen would find this option to provide a headcount at the time of landing beneficial to their business plans.

Extend the offloading window

The current allowable time period to offload red snapper, groupers, and tilefishes is from 6 a.m. to 6 p.m. At the October 2009 Council meeting, the Council voted to consider an option that would extend the allowable time period to offload fish by four hours. Therefore, the offloading window would be between 6 a.m. and 10 p.m. Extending the offloading window could potentially give fishermen greater flexibility for when they may offload their fish.

However, Amendment 29 specifically states that the allowable time period to offload IFQ fish is between 6 a.m. and 6 p.m. Therefore, the Council would need to address this option in a plan amendment if it is to be implemented in the future.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 29, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an FEIS for Amendment 29. A notice of availability for the FEIS was published on May 8, 2009 (74 FR 21684).

NMFS prepared a FRFA, as required by section 604 of the Regulatory Flexibility Act, for Amendment 29. A copy of the full analysis is available from NMFS (see **ADDRESSES**). Two of the measures contained in this proposed rule, namely the measure to remove the trip limit and AMs that constrain commercial harvest and the measure to clarify existing landing location criteria, are measures inherent in an IFQ program. Providing a definition of the term ''offloading'' for IFQ participants is further clarification of an existing IFQ component. Because the FRFA prepared for Amendment 29 analyzed the economic conditions that would exist assuming these measures were already included in the IFQ program for Gulf groupers and tilefishes, no new economic analysis has been conducted for those measures in this proposed rule.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This requirement has been submitted to the Office of Management and Budget (OMB) for approval. Public reporting burden for the ''Landing Location Criteria Form'' is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to the OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 4, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.16, a sentence is added after the heading in paragraph (c)(3)(ii) and paragraphs (c)(3)(v)(A) and (B) are revised to read as follows:

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

* * * * *

(c) * * *

(3) * * *

(ii) * * * For the purpose of this paragraph, offloading means to remove IFQ red snapper from a vessel. * * *

* * * * *

(v) * * *

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(*1*) Vehicles must have access to the site via public roads;

(*2*) Vessels must have access to the site via navigable waters;

(*3*) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: a locked gate, fence, wall, or other barrier preventing 24–hour access to the site; a gated community entry point; a guard animal; a posted sign restricting access to the site; or any other physical deterrent.

* * * * *

3. In § 622.20, a sentence is added after the heading in paragraph (c)(3)(ii) and paragraphs (c)(3)(v)(A) and (B) are revised to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

* * * * *

(c) * * *

(3) * * *

(ii) * * * For the purpose of this paragraph, offloading means to remove IFQ groupers and tilefishes from a vessel. * * *

* * * * *

(v) * * *

(A) Landing locations must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(B) Landing locations must be publicly accessible by land and water, and must satisfy the following criteria:

(*1*) Vehicles must have access to the site via public roads;

(*2*) Vessels must have access to the site via navigable waters;

(*3*) No other condition may impede free and immediate access to the site by an authorized law enforcement officer. Examples of such conditions include, but are not limited to: a locked gate, fence, wall, or other barrier preventing 24–hour access to the site; a gated community entry point; a guard animal; a posted sign restricting access to the site; or any other physical deterrent.

* * * * *

§ 622.44 [Amended]

4. In § 622.44, paragraph (h) is removed.

5. In § 622.49, paragraphs (a)(3)(i), (a)(4)(i), and (a)(5)(i) are revised to read as follows:

§ 622.49 Accountability measures.

(a) * * *

(3) * * *

(i) *Commercial fishery.* If SWG commercial landings exceed the applicable ACL as specified in this paragraph (a)(3)(i), the AA will file a notification with the Office of the **Federal Register**, at or near the

beginning of the following fishing year, to maintain the SWG commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for SWG, in gutted weight, are 7.99 million lb (3.62 million kg) for 2010, and 8.04 million lb (3.65 million kg) for 2011 and subsequent fishing years.

* * * * *

(4) * * *

(i) *Commercial fishery.* If gag commercial landings exceed the applicable ACL as specified in this paragraph (a)(4)(i), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to maintain the gag commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for gag, in gutted weight, are 1.71 million lb (0.78 million kg) for 2010, and 1.76 million lb (0.80 million kg) for 2011 and subsequent fishing years.

* * * * *

(5) * * *

(i) *Commercial fishery.* If red grouper commercial landings exceed the ACL, 5.87 million lb (2.66 million kg) gutted weight, the AA will file a notification with the Office of the **Federal Register**, at or near the beginning of the following fishing year, to maintain the red grouper commercial quota for that following year at the level of the prior year's quota.

* * * * *

[FR Doc. E9–29478 Filed 12–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070718366–7372–01]

RIN 0648–AV32

Fisheries of the Exclusive Economic Zone off Alaska; Maximum Retainable Amounts for Non-American Fisheries Act Trawl Catcher/Processors

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; withdrawal.

SUMMARY: NMFS withdraws the proposed rule to revise accounting regulations for maximum retainable amounts of selected groundfish species caught by trawl catcher/processors that are not eligible under the American Fisheries Act to participate in directed fishing for pollock (February 13, 2009). Thus, the current maximum retainable amounts accounting regulations remain in effect for the following species: yellowfin sole, rock sole, flathead sole, ''other flatfish,'' arrowtooth flounder, Pacific cod, and Atka mackerel in the Bering Sea and Aleutian Islands management area and for Pacific ocean perch in the Aleutian Islands.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907–586–7442

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP), which was prepared by the North Pacific Fishery Management Council (Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Maximum retainable amounts (MRAs) assist in limiting catch of a species within its annual total allowable catch (TAC). Once the TAC for a species is reached, retention of that species becomes prohibited and all catch of that species must be discarded. NMFS closes a species to directed fishing before the entire TAC is taken to leave sufficient amounts of the TAC available for incidental catch. The amount of the TAC remaining available for incidental catch is managed by a species-specific MRA. The MRA is the maximum round weight of a species closed to directed fishing that may be retained onboard a vessel. MRAs are calculated as a percentage of the weight of catch of each species open to directed fishing (the basis species) that is retained onboard the vessel. If the MRA for a species is 35 percent, then the round weight of the retained incidental species must be no more than 35 percent of the round weight of basis species. Directed fishing is defined in 50 CFR part 679 as ''any fishing activity that results in the retention of an amount of a species or species group onboard a vessel that is greater than the MRA for that species or species group.'' Table 11 to 50 CFR part 679 lists each incidental catch and basis species and the MRA of each incidental catch species as a percentage of each basis species.

Current regulations at § 679.20(e) require, with one exception for pollock, that the MRAs apply at any time during a fishing trip. This MRA accounting period is known as ''instantaneous,'' because the MRA may not be exceeded at any point in time during the fishing trip. The exception to this requirement, implemented in 2004 to reduce regulatory discards of pollock, allows the MRA for pollock retained by non-American Fisheries Act (AFA) vessels to apply at the end of each offload rather than at any time during the trip. Regulatory discards of a species occur when regulations prohibit retention of some portion of the catch for a species that is closed to directed fishing.

The amount and rate of groundfish discards resulting from the non-AFA trawl catcher/processor (C/P) sector have been a continuing issue with the Council. These vessels have among the highest groundfish discard (and lowest retention) amounts and rates compared with other processing sectors participating in the BSAI groundfish fisheries.

At the October 2005 Council meeting, the non-AFA trawl C/P sector proposed a way to further reduce its regulatory discards. Sector representatives noted that substantial portions of groundfish discard in the BSAI are regulatory discards. They testified that increasing the MRA accounting and calculation interval from ''instantaneous'' to a one-time calculation at the time of offload would allow more time to accumulate species open to directed fishing to use as a basis for the MRA, i.e., for retaining catch of species closed to directed fishing. The sector predicted that additional time to accumulate basis species would reduce the amount of regulatory discards, particularly in situations when relatively high rates of incidentally caught species were taken early in a fishing trip.

The Council took the sector's proposal under consideration because of the multi-species nature of the sector's fisheries and its longstanding difficulties in reducing discards. The action was also intended to provide an opportunity for non-AFA trawl C/Ps to minimize bycatch and so would be consistent with National Standard 9 of the Magnuson Stevens Act. National Standard 9 requires that conservation and management measures minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

Although the Council's action provided relief from the ''instantaneous'' accounting interval, the

Council determined that a relaxed interval would increase incentives to harvest incidental catch in Steller sea lion protection areas. To address this problem, the Council decided that a new fishing trip would begin or end any time a non-AFA trawl C/P would enter or leave a Steller sea lion protection area that was closed to directed fishing for Atka mackerel or Pacific cod. Currently, regulations provide that a new fishing trip is triggered when a vessel enters or exits an area where a different directed fishing prohibition applies, including Steller sea lion protection areas. However, when directed fishing for Pacific cod or Atka mackerel is closed both inside and outside a Steller sea lion protection area, entering or exiting the Steller sea lion protection area does not trigger the start of a new fishing trip because the directed fishing prohibitions are the same on either side of the Steller sea lion protection area. This allows vessels to retain Pacific cod or Atka mackerel caught inside a Steller sea lion protection area using target species (basis species) retained from outside the Steller sea lion protection areas. The Council's action to require that a new fishing trip start each time a vessel enters or leaves a Steller sea lion protection area, regardless of the fishery closures in effect outside the Steller sea lion protection areas, would limit the potential to top-off and target Pacific cod or Atka mackerel inside the protection areas. The new fishing trip trigger also would facilitate NMFS' monitoring MRA compliance inside the Steller sea lion protection areas (at the end of the trip for some species and at any point in time for other species). In response to the Council's 2006 action, NMFS published a proposed rule (74 FR 7209, February 13, 2009). A detailed description of the proposed changes to MRA accounting is included in the proposed rule. To provide the non-AFA trawl C/P sector additional flexibility to increase retention and decrease regulatory discards of certain groundfish species, NMFS proposed to change the MRA calculation timing from ''instantaneous'' to instead occur at the end of a fishing trip. Consistent with the Council motion, instantaneous MRA accounting would continue to apply inside Steller sea lion protection areas. NMFS proposed to revise the definition of a fishing trip at § 679.2 to require that a new fishing trip would start or end when a non-AFA trawl C/P entered or exited a Steller sea lion protection area that was closed to directed fishing for Pacific cod or Atka mackerel.

A key element of the proposed rule would have established how MRAs would be applied to Atka mackerel and Pacific cod in the BSAI. The proposed rule also would have clarified that the location of Atka mackerel and Pacific cod retained catch could impact MRA accounting requirements, depending upon whether these species were retained inside or outside a designated Steller sea lion protection area. For example, if a non-AFA trawl C/P completed one fishing trip inside a Steller sea lion protection area and a second fishing trip outside a Steller sea lion protection area, two different MRA accounting intervals would have applied to retention of Atka mackerel, as long as a single haul did not occur on both sides of a Steller sea lion protection area. For a non-AFA trawl C/P in an Amendment 80 cooperative, if Atka mackerel were closed to directed fishing both inside and outside the Steller sea lion protection area, MRAs would have applied at any time (i.e., ''instantaneously'') during that fishing trip inside the Steller sea lion protection area, and MRAs would not apply outside the Steller sea lion protection area. For a non-AFA trawl C/P that was not in an Amendment 80 cooperative, if Atka mackerel were closed to directed fishing both inside and outside the Steller sea lion protection area, MRAs also would have applied at any time during that fishing trip inside the Steller sea lion protection area, and would have applied at the end of a fishing trip outside the Steller sea lion protection area.

Since the Council recommended this action, two significant programs (Amendment 79 and Amendment 80) have been implemented by the Secretary to improve utilization and retention of groundfish caught by the non-AFA trawl C/P sector in the BSAI. Amendment 79 (71 FR 17362, April 6, 2006) implemented the groundfish retention standard (GRS), requiring all vessels in this sector that are greater than or equal to 125 ft. (38.1 m) to comply with a minimum annual percent of total groundfish caught. The GRS rate for 2009 requires that vessels retain 75 percent of all groundfish caught. The GRS increase from the baseline of 65 percent in 2008 to the current level has been effective in increasing this sector's retained catch of groundfish. The GRS requires this sector to continue to increase the percentage of retained catch of groundfish to 85 percent by 2011.

The Amendment 80 cooperative program (72 FR 52668, September 14, 2007) extended the GRS to all vessels in the non-AFA trawl C/P sector, regardless of length, and developed a cooperative structure for the sector that is intended to encourage additional retention and utilization of groundfish. By extending the scope of the GRS to smaller vessels in the sector and by establishing a limited access permit program (LAPP) program authorizing annual groundfish allocations to the sector, Amendment 80 was intended to encourage fishing practices that would lower groundfish discard rates. Because the direct groundfish allocations of species under Amendment 80 included five of the eight included in this MRA accounting proposed rule, many of these important species no longer are closed to directed fishing, thereby negating some of the potential impacts of this proposed action. The species allocated by Amendment 80 to this sector are yellowfin sole, flathead sole, rock sole, Atka mackerel and Pacific cod.

Response to Comments

The proposed rule was published in the **Federal Register** for a 30–day public review and comment period. A total of five written submissions were received. Four of the comment submissions were opposed to revising MRA accounting for non-AFA trawl C/Ps in the BSAI, no comments were in favor, and one comment addressed issues not within the scope of the proposed rule. Commenters included two representatives of the non-AFA trawl C/P sector, representing all but one of the 21 vessels in that sector, and the general public.

Comment 1: The costs of the action to the non-AFA trawl C/P sector would exceed the benefits. The proposed regulation to trigger a new fishing trip any time a vessel enters or exits a Steller sea lion could reduce the amount of valuable incidental catch, such as Atka mackerel and Pacific cod, that may be retained from inside the Steller sea lion protection areas when compared to retention allowed under current regulations. The potential reduction in the value of retained incidental catch as a result of the new fishing trip trigger likely would exceed any increase in the value of returned incidental catch as a result of the longer MRA accounting period.

Response: The proposed action relied on previous industry testimony indicating this action would increase the value of groundfish catch to the non-AFA trawl C/P sector. Now, representatives for this sector assert in their comments that this is not the case because the proposed rule requires instantaneous accounting with an additional fishing trip trigger for a new logbook entry to accurately account for MRAs inside Steller sea lion protection areas. NMFS' response to Comment 6 explains that the additional fishing trip

trigger and logbook entry are provisions necessary to support the action, as they allow for accurate estimates of the amount of Atka mackerel and Pacific cod retained in Steller sea lion protection areas. NMFS has no data or information other than these public comments from members of the non-AFA trawl C/P sector to conclude that the costs of the proposed trip trigger differ from those suggested in public comment. Those who submitted public comments on this issue represent directly or indirectly all but one of the vessels in the non-AFA trawl C/P sector. Thus, NMFS believes that the concerns expressed in these comments are representative of the overall interests of the affected sector. No contrary information or comment was received from any other sector members.

Comment 2: The proposed measures will not improve retention of groundfish and may increase regulatory discards of some groundfish species. Instantaneous MRA accounting will reduce the amount of Atka mackerel and Pacific cod that can be retained from catch inside the Steller sea lion protection areas. If a non-AFA trawl C/P operator completed a trawl tow where the amount of Atka mackerel caught in the Steller sea lion protection area exceeded the available basis species inside the Steller sea lion protection area, the amount of Atka mackerel exceeding the MRA percent for an amount of basis species must be discarded. Under the current regulation, if the same operator preferred to retain Atka mackerel caught inside a Steller sea lion protection area, it would be possible for the operator to continue to fish outside this area, to catch sufficient amounts of basis species to stay at or under the Atka mackerel MRA.

Response: One of the assumptions supporting the proposed rule was that this action would provide tools for reducing regulatory discards. Consistent with the Council action, NMFS determined that the proposed rule must include a trip trigger for vessels entering or exiting Steller sea lion trip protection areas (see response to Comment 6). Comments from the non-AFA trawl C/P sector support a determination that the new trip trigger would reduce the sector's opportunity to retain groundfish vis-a-vis the MRA provisions. Thus, this action is unlikely to achieve the objectives intended by the Council and identified as the purpose and need statement for the proposed rule. NMFS does not have any data or information to confirm a different outcome than the commenter suggests, has no reason to doubt the accuracy of this public comment, and assumes that it is correct.

Comment 3: This regulation is unnecessary because other more effective means of reducing regulatory discards exist. For example, one tool in 50 CFR 679.27 for improving groundfish retention for non-AFA trawl C/Ps is the Groundfish Retention Standard (GRS), and a second tool is the fishing cooperative that many of these vessels joined under Amendment 80. These tools are more effective in improving the sector's retention of groundfish than the expanded MRA accounting period developed in this proposed rule.

Response: NMFS agrees that the GRS is likely to be a more effective tool for reducing regulatory discards in the non-AFA trawl C/P sector compared with the tools provided by this proposed rule. Since the time of Council action, the GRS and Amendment 80 allocations and cooperative formation programs have been instituted to facilitate retention and reduce discards. The GRS sets specific retention requirements for groundfish, caught both as targets and incidentally, that increase annually from 65 percent in 2009 to 85 percent by 2011. It is likely that the GRS will compel members of this sector to increase groundfish retention until the maximum GRS is reached. NMFS does not have sufficient data at this time to determine if the cooperative formed under Amendment 80 has increased groundfish retention because it has only been in operation for less than two years.

Comment 4: The proposed new fishing trip trigger in the proposed rule would cause additional confusion for tracking compliance with MRAs for the non-AFA trawl C/P sector. Under the proposed rule a vessel operator would need to comply with additional recordkeeping by filling out a new logsheet page each time the vessel entered or exited the Steller sea lion protection area. That operator would also need to document for NOAA Office for Law Enforcement that he has retained the necessary basis species from within a Steller sea lion protection area to match an amount of Atka mackerel or Pacific cod caught in a Steller sea lion protection area. These proposed recordkeeping provisions would require additional tracking of retained catch for non-AFA trawl C/P vessels as they fish through areas that they do not currently track, and increase the probability of unintentional MRA violations.

Response: NMFS is not able to confirm if the additional trip trigger for new logbook entries described in this proposed rule is more burdensome or confusing to MRA accounting for vessels in the non-AFA trawl C/P sector compared with the current conditions that trigger the start of a fishing trip. However, the analysis for the proposed rule does state that non-AFA C/P vessel operators would be required to carry out additional recordkeeping and tracking of MRAs. Thus, it is possible that this additional recordkeeping could increase overall complexity and reporting costs of MRA accounting. For example, MRA accounting would have become more complex because the proposed rule applied multiple accounting periods by specific area and groundfish species. The additional recordkeeping was proposed as the least burdensome approach NMFS could implement to assist non-AFA trawl C/Ps in tracking MRAs, as they would only be required to fill out a new logsheet page each time a vessel entered or exited a Steller sea lion protection area. NMFS knows of no alternative recordkeeping method that would achieve the tracking requirements for the proposed action while being less burdensome.

Comment 5: The non-AFA trawl C/P sector was not aware of the consequences of the trip trigger at the time the Council recommended this regulatory amendment. When issues began to be raised to the Council during the development of the proposed rule, the sector should have been afforded another opportunity to testify to the Council and express its support or lack thereof on the record.

Response: NMFS acknowledges that at the time the Council concluded this action, it is possible that members of the non-AFA trawl C/P sector may not have fully understood the impacts of the additional trip trigger for vessels entering or exiting a Steller sea lion protection area. The SSL protection area trip trigger and logbook reporting requirement was not analyzed in the EA/RIR/IRFA used for the Council action. Further effects of the new fishing trip trigger were identified by NMFS and included in the EA/RIR/IRFA published with this proposed rule. Consequently, the action's impacts on non-AFA trawl C/P sector members may not have been well understood until publication of the proposed rule and accompanying EA/RIR/IRFA.

Comment 6: The additional fishing trip trigger included in the proposed rule to prevent vessels from using Steller sea lion protection areas to top off on Atka mackerel and Pacific cod was not a logical component of the original action passed by the Council and is unnecessary.

Response: NMFS disagrees with the commenter that the proposed new fishing trip trigger is not a logical component of the Council's final action.

To comply with the proposed rules requirement to account for MRAs for Atka mackerel or Pacific cod at any time during a fishing trip inside BSAI Steller sea lion protection areas, vessel operators would have had to keep a discrete record of retained catch of these two species and the required basis species for computing MRAs when a vessel is inside a Steller sea lion protection area. To avoid exceeding retained catch limits at any time during a fishing trip inside Steller sea lion protection areas, the proposed rule required a non-AFA trawl C/P vessel operator to record and track the discrete amounts of retained basis species, Atka mackerel and Pacific cod, for any trawl tow or series of tows inside a Steller sea lion protection area. The new fishing trip trigger would have assured that those amounts of retained catch would remain discrete in the Steller sea lion protection area by requiring a new fishing trip to begin at any time a vessel entered or exited a Steller sea lion protection area. The additional trip trigger in the proposed rule would ensure that Atka mackerel caught in Steller sea lion protection areas would continue to be identified in NMFS' catch accounting system as being caught in these areas as opposed to some adjacent location. Finally, without a new trip trigger for identifying the beginning and end point of records for retained catch, it would be difficult for a vessel operator to demonstrate this discrete record to NOAA Office for Law Enforcement.

Comment 7: The commenter requests that if NMFS considers any additional fishing trip triggers, they be addressed under the process associated with future reviews of Steller sea lion recovery and not this MRA accounting proposed rule.

Response: The Steller sea lion recovery process is separate from this action and not relevant to proposed revisions of MRA accounting. Currently, NMFS is in the process of re-consultation and preparation of an updated Biological Opinion evaluating the impacts of the Alaska groundfish fisheries on endangered and threatened species, primarily Steller sea lions. The Biological Opinion and recovery planning will address a broad range of issues relative to Steller sea lion protection and may or may not include additional consideration of revisions to the definition of a fishing trip or MRA accounting.

Comment 8: If NMFS proceeds with a final rule to revise MRA accounting for the non-AFA trawl C/P sector, it should revise MRA accounting from offload to offload as currently allowed for pollock rather than at the end of a fishing trip.

Response: NMFS is withdrawing this proposed rule, and is not considering further rulemaking to revise MRA accounting to any interval at this time. However, the proposed rule explains why the alternatives for extending MRA accounting to the time of offload could result in significant monitoring and enforcement issues.

Comment 9: The commenter requests information on whether the Pribilof Habitat Protection Zone plays into NMFS' planning process and asks if NMFS has studied the efficacy of the Pribilof Habitat Protection Zone.

Response: The Pribilof Habitat Protection Zone is closed to trawling at all times. This proposed MRA rule only applies where trawling is allowed. Therefore, this proposed rule would have had no impact on the Pribilof Habitat Protection Zone.

Comment 10: No fishing should be allowed in the BSAI for groundfish. This agency allows all marine mammals to starve so that commercial fishing profiteers can make a million dollars in a couple of days at sea.

Response: This comment is not relevant to the proposed rule being considered because modifying season length or the allowable catch for any of the species in the proposed rule is outside the scope of this action. Total allowable catch amounts for groundfish species in the BSAI are established through the annual specifications process and remain the limit on total catch. The proposed rule did not adjust these amounts and was intended to reduce regulatory discards and improve retention of groundfish species already caught. It would have had no impact on the duration of season lengths or total allowable catch.

Justification for Withdrawal

NMFS is withdrawing this proposed rule because, as pointed out in public comment, representatives of the non-AFA trawl C/P sector who originally requested this action have requested that NMFS withdraw the proposed rule. These representatives have provided information demonstrating that the proposed rule will no longer assist the sector in increasing the value of groundfish catches, and it would not provide the intended flexibility to increase retention of groundfish in the BSAI.

This action was proposed to assist in meeting objectives of National Standard 9 by providing an additional tool for reducing groundfish bycatch to the extent practicable. Comments provided by the non-AFA trawl C/P sector support a conclusion that the proposed rule may not be effective in reducing regulatory discards because of additional costs for complying with a new trip trigger. National Standard 9 states, ''Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided or minimize the mortality of such bycatch.'' The proposed action, therefore, is unlikely to achieve the bycatch reduction objectives of National Standard 9 if vessel operators in this sector will not make use of the additional flexibility provided for reducing regulatory discards. Members of this sector state that they will not make use of the additional MRA accounting interval because all members of the single cooperative formed under Amendment 80 have an amendment 80 allocation for most of their important groundfish species, including Atka mackerel, Pacific cod, yellowfin sole, flathead sole, rock sole. Thus, fisheries for these species are never closed for directed fishing to the majority of vessels in this sector. Arrowtooth flounder also is included in the proposed action, but this is a minor target species for the non-AFA trawl C/P sector.

If implemented as described in the proposed rule, the proposed revisions to MRA accounting also may be inconsistent with National Standard 7. National Standard 7 states, ''Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.'' The non-AFA trawl C/P sector's comments state that the cost of the proposed action would exceed the benefits to the sector, because vessel operators would find it more difficult to retain Atka mackerel and Pacific cod inside Steller sea lion protection areas. Retaining Atka mackerel and Pacific cod inside Steller sea lion protection areas could be made more difficult because of insufficient amounts of basis species available inside Steller sea lion protection areas for matching with incidental catch of Pacific cod or Atka mackerel. That could have the effect of requiring these operators to discard these valuable species, compared with current regulations that allow these vessels to catch basis species outside Steller sea lion protection areas. Prior to these public comments, NMFS was not aware of and was not informed by this sector that the additional trip trigger would result in costs of the magnitude that could offset the value of a longer MRA accounting interval for species caught by non-AFA trawl C/Ps. Thus, the record for this action does not show how overall benefits outweigh the costs,

and it could result in significant adverse economic impacts that are inconsistent with National Standard 7.

Following the closing of the public comment period for the proposed rule and pursuant to MSA Sec. 304(b)(3), NMFS consulted with the Council at the April 2009, meeting, and informed the Council that the industry was now opposed to the MRA accounting revision. NMFS also informed that Council that it believed the appropriate action was to withdraw the rule.

In conclusion, NMFS is withdrawing this proposed rule because it is inconsistent with the intent of the Council motion taken in 2006 and 2007 for the following reasons: it is likely to be inconsistent with National Standards 7 and 9; it is unlikely to achieve the Council's objective to improve groundfish retention and reduce regulatory discards; other regulatory tools such as the GRS, Amendment 80 sector allocations, and the sector fishing cooperatives, are likely to be more effective for improving groundfish retention; it is likely to increase costs to the non-AFA trawl C/P sector; and it is likely to impose implementation costs on NMFS without benefit to the non-AFA trawl C/P sector or to the Nation.

Dated: December 4, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E9–29475 Filed 12–9–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 74, No. 236

Thursday, December 10, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Proposed Information Collection Activities

ACTION: Notice of submission to OMB and 30-day public comment period.

SUMMARY: The Recovery Accountability and Transparency Board (Board) is giving public notice that it has submitted to the Office of Management and Budget (OMB) for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before January 11, 2010 to be assured of consideration.

ADDRESSES: Send comments to Ms. Sharon Mar, Desk Officer for the Recovery Accountability and Transparency Board, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167; or electronically mailed to *smar@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (PRA), Pubic Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), the Board invites the general public and other federal agencies to comment on the proposed information collection. The Board published a notice of proposed collection for this information collection on August 31, 2009 (74 FR 44814). No comments were received. However, the first reporting period under the American Recovery and Reinvestment Act of 2009 has since occurred, and the Board has therefore been able to modify its estimated number of respondents accordingly. The Board has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the Board; (b) the accuracy of the Board's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, the Board is soliciting comments concerning the following information collection:

Title of Collection: FederalReporting.gov Recipient Registration System.

OMB Control No.: 0430–0002.

Description: Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (Recovery Act), requires recipients of Recovery Act funds to report on the use of those funds. These reports are to be submitted to FederalReporting.gov, and certain information from these reports will later be posted to the publicly available Web site *Recovery.gov*.

The FederalReporting.gov Recipient Registration System (FRRS) was developed to protect the Board and FederalReporting.gov users from individuals seeking to gain unauthorized access to user accounts on FederalReporting.gov. FRRS is used for the purpose of verifying the identity of the user; allowing users to establish an account on FederalReporting.gov; providing users access to their FederalReporting.gov account for reporting data; allowing users to customize, update, or terminate their accounts with FederalReporting.gov; renewing or revoking a user's account on FederalReporting.gov, thereby protecting FederalReporting.gov and FederalReporting.gov users from potential harm caused by individuals with malicious intentions gaining unauthorized access to the system.

To assist in this goal, FRRS will collect a registrant's name, e-mail address, telephone number and extension, three security questions and answers, and, by way of a DUNS number, organization information. The person registering for FederalReporting.gov will generate a self-assigned password that will be stored on the FRRS, but will only be accessible to the registering individual.

Affected Public: Private sector and state, local, and tribal governments.

Total Estimated Number of Respondents: 88,000.

Frequency of Responses: Once.

Total Estimated Annual Burden Hours: 7,333.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. E9–29436 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–GA–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pacific Southwest Region, Regional Office, California, Sierra Nevada Forests—Supplemental EIS to the 2004 Sierra Nevada Framework per November 4, 2009 Court Order

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare a supplemental environmental impact statement.

SUMMARY: The Pacific Southwest Region of the U.S. Forest Service proposes to prepare a supplemental EIS to the 2004 Sierra Nevada Framework EIS. This SEIS is intended to accomplish two narrow goals: (1) Analyze all the alternatives considered in the 2004 SEIS using the modeling techniques utilized for alternatives S1 and S2 in the 2004 SEIS; and (2) account for the new management objectives of reducing stand density for forest health, restoring and maintaining ecosystem structure and composition, and restoring ecosystems after severe wildfires and other large catastrophic events in all the alternatives evaluated. The purpose of the SEIS is to comply with two November 4, 2009 court orders from the Eastern District of California which require the preparation of this narrowly tailored SEIS.

DATES: The Draft SEIS is expected in early February 2010 and the public comment period will be open for 45 days. The supplemental environmental

impact statement is expected by May 1, 2010.

FOR FURTHER INFORMATION CONTACT: For further information contact Ron Pugh, Deputy Regional Planning Director, at US Forest Service, 1323 Club Drive, Vallejo, CA, Phone 707–562–8951.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The SEIS proposed in this notice is required by court orders issued in *Sierra Forest Legacy* v. *Rey,* No. 2:05–cv–00205–MCE–GGH (E.D. Cal. Nov. 4, 2009) and *People of the State of California* v. *USDA,* No. 2:05–cv–00211–MCE–GGH (E.D. Cal. Nov. 4, 2009). Those orders concluded that the Forest Service was required to remedy the 2004 Framework's violation of NEPA by preparing a focused SEIS by May 1, 2010. Specifically, the Court stated as follows:

the Court orders the Forest Service to prepare another supplemental EIS on the Framework, one that meets the range of alternatives and analytical consistency identified by the Ninth Circuit in its decision on the preliminary injunction portion of this case. That supplemental EIS process is to be completed not later than May 1, 2010. The Ninth Circuit's decision on the 2004 Framework concluded in a ruling on a motion for a preliminary injunction that the 2004 Framework's SEIS violated NEPA due a failure to properly consider alternatives. *See Sierra Forest Legacy* v. *Rey,* 577 F.3d 1015 (9th Cir. 2009). The Ninth Circuit found two particular errors, as excerpted below:

First, USFS altered its modeling techniques between the issuance of the 2001 FEIS and the 2004 SEIS. Unfortunately, the 2004 SEIS largely relied on fire risk and timber output figures in the 2001 FEIS, a mistake that was compounded because one of the alternatives that was considered in 2004 was recalculated under the new techniques, whereas the rest of the alternatives to which it was compared were not recalculated. Because USFS failed to account for its changed modeling techniques in the alternatives it considered, Legacy has a strong probability of success on the merits under NEPA.

Second, the 2004 SEIS introduced substantively new objectives from those contained within the 2001 FEIS. The 2004 SEIS repeatedly stated that its purpose was to ''adjust existing management direction,'' 2004 SEIS at 3098 (emphasis added), and to broaden the basic strategy ''to include other management objectives such as reducing stand density for forest health, restoring and maintaining ecosystem structure and composition, and restoring ecosystems after severe wildfires and other large catastrophic disturbance events,'' 2004 SEIS at 2994 (emphasis added). The introduction of these new objectives plainly constituted a change in circumstance that is ''relevant to the development and evaluation of alternatives'' that USFS must account for * * * in the alternatives it considers.

Purpose and Need for Action

The purpose of this action is to remedy the two flaws found by the Ninth Circuit, as required in the District Court orders of November 4, 2009.

Proposed Action

The Forest Service proposes to provide an objective comparison of all of the alternatives considered in detail in the 2004 Framework, including those carried forward from the 2001 Framework. Alternatives F1 through F8 will be analyzed using the same modeling methods that were used for Alternatives S1 and S2 (*see* Final Supplemental Environmental Impact Statement for the Sierra Nevada Plan Amendment, January 2004, Chapter 2). A new SEIS to the 2004 Framework SEIS will be prepared that shows the results of this analysis. The new SEIS will also consider the objectives of reducing stand density for forest health, restoring and maintaining ecosystem structure and composition, and restoring ecosystems after severe wildfires and other large catastrophic disturbance events, which the Ninth Circuit found were introduced by the 2004 Framework. A new ROD consistent with the scope of this supplement will be prepared that considers all of this updated information.

Responsible Official

Regional Forester, Pacific Southwest Region, U.S. Forest Service, 1323 Club Drive, Vallejo, CA 94592 is the Responsible Official.

Nature of Decision To Be Made

The Responsible Official will decide if a different decision from that reached in the 2004 Framework ROD is warranted when the range of alternatives flaws identified by the Ninth Circuit are remedied or if continued implementation of Alternative S2 as originally chosen in the ROD for the 2004 SEIS is warranted.

Dated: December 9, 2009.

Thomas A. Contreras,

Deputy Regional Forester.

[FR Doc. E9–29446 Filed 12–9–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Technical Assistance and Training Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Funds Availability (NOFA) under the American Recovery and Reinvestment Act of 2009 (ARRA) for technical assistance and training program and solicitation of applications.

SUMMARY: The Rural Utilities Service (RUS) announces the availability of grant funds pursuant to Title I of Division A of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5 (Feb. 17, 2009) with regard to the Technical Assistance and Training Grant Program (TAT). Funds authorized by the Recovery Act are in addition to Fiscal Year (FY) 2009 funding for this grant program. The intent of this notice is to advise the public of the funds available and to provide transparency as required by the Recovery Act. Regulations for the Technical Assistance and Training Grant Program regulations can be found at 7 CFR part 1775. Funding announced is intended to support technical assistance and training activities that facilitate efforts by rural communities to access Recovery Act funding for critical water and waste disposal infrastructure projects, particularly those communities in smaller, lower income, and persistent poverty areas.

DATES: You may submit completed applications for TAT grants on paper or electronically according to the following deadlines:

Paper Submissions: Paper submission of an application must be postmarked and mailed, shipped, or sent overnight no later than January 11, 2010 to be eligible for grant funding. Late or incomplete applications will not be eligible for grant funding.

Electronic Submissions: Submit electronic grant applications at *http://www.grants.gov* (Grants.gov) and follow the instructions you find on that Web site. Electronic submissions of applications must be received by January 11, 2010 to be eligible for grant funding. Late or incomplete applications will not be eligible for grant funding.

ADDRESSES: You may obtain application guides and materials for the Technical Assistance and Training grants the following ways:

- The Internet at the RUS Water and Environmental Programs (WEP) Web site: *http://www.usda.gov/rus/water/*.
- You may also request application guides and materials from RUS by contacting WEP at (202) 720–9586.

Completed applications may be submitted the following ways:

Paper applications: Send completed paper applications for Technical Assistance and Training grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2233, STOP 1570, Washington, DC 20250–1570. Applications should be marked ''Attention: Assistant Administrator, Water and Environmental Programs.''

Electronic applications: Electronic grant applications may be submitted at

http://www.grants.gov/ (Grants.gov), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Steve Saulnier, Branch Chief, Portfolio Management Branch, Water & Environmental Programs, Rural Utilities Service, U.S. Department of Agriculture (USDA), Room 2231 South Building, Stop 1570, 1400 Independence Ave., SW., Washington, DC 20250–1570. Telephone: (202) 690–2526, FAX: (202) 690–0649, E-mail: *steve.saulnier@wdc.usda.gov*.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB). Comments on this notice must be received by February 8, 2010.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Services, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 5166—South Building, Washington, DC 20250–1522.

Title: Technical Assistance and Training Grant Program (TAT).

OMB Control Number: 0572–0144.

Type of Request: New information collection package.

Abstract: The Rural Utilities Service (RUS) provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need. The additional funding provided by the Recovery Act for Technical Assistance and Training grants will support technical assistance and training activities that facilitate efforts by rural communities to access Recovery Act funding for critical water and waste disposal infrastructure projects, particularly those communities in smaller, lower income, and persistent poverty areas in accordance with 7 CFR part 1775. Qualified private non-profit organizations may apply.

Estimate of Total Annual Burden: Public reporting burden for this collection of information is estimated to be 1042 total burden hours.

Estimated Number of Respondents: 357.

Estimated Number of Responses per Respondent: 1.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Technical Assistance and Training Grants (TAT).

Announcement Type: Funding Level Announcement and Solicitation of Applications.

Authority: 7 U.S.C. 1926 (a)(14); Pub. L. 111–5, 123 Stat. 115.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.761.

Dates: Completed TAT grant applications must be mailed, shipped or submitted electronically through Grants.gov no later than January 11, 2010 to be eligible for funding.

Items in Supplementary Information

I. Overview

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act) Public Law 111–5, 123 Stat. 115 (2009) and stated that: ''The essential goal of the Recovery Act is to provide a direct fiscal boost to help lift our Nation from the greatest economic crisis in our lifetimes and lay the foundation for future growth.'' Accordingly, the Recovery Act identifies five overall purposes as follows: A. To preserve and create jobs and promote economic recovery; B. to assist those most impacted by the recession; C. to provide investments needed to increase economic efficiency by spurring technological advances in science and health; D. to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and E. to stabilize State and local government budgets.'' The Recovery Act further instructs the President and the heads of Federal departments and agencies to manage and expend Recovery Act funds to achieve these five purposes, ''commencing expenditures and activities as quickly as possible consistent with prudent management.''

II. Funding Opportunity

The Rural Utilities Service (RUS) provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need. The additional funding provided by the Recovery Act for Technical Assistance and Training grants will allow rural communities to better identify and evaluate solutions to water and waste disposal problems, assist applicants in preparing applications for water and waste grants made in accordance with 7 CFR part 1775, or improve operation and maintenance of existing water and waste disposal facilities in rural areas. Qualified private non-profit organizations may apply.

In using funds made available by the Recovery Act for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously. Recipients shall also use grant funds in

a manner that maximizes job creation and economic benefit.

III. Award Information

At least ten percent of funding shall be allocated for assistance in persistent poverty counties. ''Persistent poverty counties'' means any county that has had twenty percent or more of its population living in poverty over the past thirty years, as measured by the 1980, 1990, and 2000 decennial censuses.

IV. Available Funds

The Water and Environmental Programs will utilize $5 million of Recovery Act funds for TAT grants to be awarded by September 30, 2010.

V. Eligibility Information

A. What Are the Basic Eligibility Requirements for Applying?

(For more specific information *see* 7 CFR 1775, Section 1775.35.) The applying entity (Applicant) must:

1. Be a private, non-profit organization that has tax-exempt status from the United States Internal Revenue Service (IRS);

2. Be legally established and have the proven ability, background, experience, legal authority and actual capacity to provide technical assistance and/or training to carry out the grant purpose.

3. Have no delinquent debt to the Federal Government or no outstanding judgments to repay a Federal debt.

B. What Are the Basic Eligibility Requirements for a Project?

The project must identify and evaluate solutions to water and waste disposal problems, assist applicants in preparing applications for water and waste grants made in accordance with 7 CFR part 1775 of this chapter, or improve operation and maintenance of existing water and waste disposal facilities in rural areas.

VI. Accountability and Transparency

With respect to these funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, shall certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification shall include a description of the investment, the estimated total cost, and the amount of these funds to be used, and shall be posted on the following Web site *http://www.recovery.gov*. A State or local agency may not receive infrastructure investment funding from funds made available in this Act unless this certification is made and posted.

VII. Buy American

A. None of the funds made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all the iron, steel and manufactured goods used in the project are produced in the United States.

B. *Exception*—This shall not apply if the head of the Federal department or agency involved finds that—(1) Applying subsection would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality or (3) inclusion of iron, steel, and manufactured goods are produced in the United States will increase the cost of the overall project by more than 25 percent.

C. If the head of a Federal department or agency determines that it is necessary to waive the application of submission (1) based on a finding under subsection (2), the head of the department or agency shall publish in the **Federal Register** a detailed written justification as to why the provision is being waived.

VIII. Reporting Requirements Under 2 CFR 176.50 ARRA Sec. 1512

A. Not later than 10 days after the end of calendar quarter, each recipient that received ARRA funds from a Federal agency shall submit a report to that agency that contains (a) the total amount of recovery funds received from that agency; (b) the amount of ARRA funds received that were expended or obligated to projects or activities; (c) a detailed list of all projects or activities for which recovery funds were expended or obligated, including—the name, a description, an evaluation of the completion status, an estimate of the number of jobs created, the number of jobs retained, and for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under ARRA, including a name of the person to contact at the agency if there are concerns with the infrastructure investment; (d) detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), allowing aggregate reporting on awards below $25,000.

B. *Compliance*—Within 180 days of enactment, as a condition of receipt of funds under ARRA, Federal agencies shall require any recipient of such funds to provide the information required under recipient reports.

IX. Wage—Rates Requirements

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Further details on eligible applicants and projects may be found in the relevant regulations listed in Section II.C.

X. Civil Rights

Programs referenced in this notice are subject to applicable civil rights laws.

These laws include the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended in 1988, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975.

XI. Application and Submission Information

A. Where To Get Application Information

The grant application guide, copies of necessary forms and samples, and the Technical Assistance Grants regulation (7 CFR 1775) are available from these sources:

- *The Internet: http://www.usda.gov/rus/water/*,
- *http://www.grants.gov*. or,
- For paper copies of these materials: call (202) 720–9586.

1. You may file an application in either paper or electronic format. Whether you file a paper or an electronic application, you will need a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number. You must provide your DUNS number on the SF–424, ''Application for Federal Assistance.''

To verify that your organization has a DUNS number or to receive one at no cost, call the dedicated toll-free request line at 1–866–705–5711 or access the Web site *http://www.dunandbradstreet.com*. You will need the following information when requesting a DUNS number:

a. Legal Name of the Applicant;
b. Headquarters name and address of the Applicant;
c. The names under which the Applicant is doing business as (dba) or other name by which the organization is commonly recognized;
d. Physical address of the Applicant;
e. Mailing address (if separate from headquarters and/or physical address) of the Applicant;
f. Telephone number;
g. Contact name and title;
h. Number of employees at the physical location.

2. Send or deliver paper applications by the U.S. Postal Service (USPS) or courier delivery services to the RUS receipt point set forth below. RUS will not accept applications by fax or e-mail. For paper applications mail or ensure delivery of an original paper application (no stamped, photocopied, or initialed signatures) and two copies by the January 11, 2010 to the following address: Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, 1400 Independence Avenue, SW., STOP 1548, Room 5145 South, Washington, DC 20250–1548.

The application and any materials sent with it become Federal records by law and cannot be returned to you.

3. For electronic applications, you must file an electronic application at the Web site: *http://www.grants.gov.* You must be registered with Grants.gov before you can submit a grant application. If you have not used Grants.gov before, you will need to register with the Central Contractor Registry (CCR) and the Credential Provider. You will need a DUNS number to access or register at any of the services. The registration processes may take several business days to complete. Follow the instructions at Grants.gov for registering and submitting an electronic application. RUS may request original signatures on electronically submitted documents later.

The CCR registers your organization, housing your organizational information and allowing Grants.gov to use it to verify your identity. You may register for the CCR by calling the CCR Assistance Center at 1–888–227–2423 or you may register online at: *http://www.ccr.gov*.

The Credential Provider gives you or your representative a username and password, as part of the Federal Government's e-Authentication to ensure a secure transaction. You will need the username and password when you register with Grants.gov or use Grants.gov to submit your application. You must register with the Central Provider through Grants.gov: *https://apply.grants.gov/OrcRegister*.

B. What Constitutes a Completed Application?

1. To be considered for assistance, you must be an eligible entity and must submit a complete application by the deadline date.

You must consult the cost principles and general administrative requirements for grants pertaining to their organizational type in order to prepare the budget and complete other parts of the application.

You also must demonstrate compliance (or intent to comply), through certification or other means, with a number of public policy requirements.

2. Applicants must complete and submit the following forms to apply for a Technical Assistance and Training grant:

(a) Standard Form 424, ''Application for Federal Assistance (For Non-Construction).''

(b) Standard Form 424 A & B, ''Budget Information—Non-Construction Programs.''

(c) RD Instruction 1940–Q, Exhibit A–1 or Standard Form LLL, ''Disclosure of Lobbying Activity'', whichever is appropriate (include only if grant is over $100,000).

(d) Form AD 1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transaction.''

(e) Form AD 1049, ''Certification Regarding Drug Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals.''

(f) Form AD 1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''

(g) Form RD 400–1, ''Equal Opportunity Agreement.''

(h) Form RD 400–4, ''Assurance Agreement'' (Under Title VI, Civil Rights Act of 1964).

(i) Indirect Cost Rate Agreement (if applicable, applicant must include approved cost agreement rate schedule).

(j) Statement of Compliance for Title VI of the Civil Rights Act of 1964.

(k) Certification regarding Forest Service grant.

(l) Attachment regarding assistance provided to Rural Development Employees as required by RD Instruction 1900–D.

3. All applications shall be accompanied by the following supporting documentation:

(a) Evidence of applicant's legal existence and authority in the form of:

(i) Certified copies of current authorizing and organizational documents for new applicants or former grantees where changes were made since the last legal opinion was obtained in conjunction with receipt of an RUS grant, or, certification that no changes have been made in authorizing or organizing documents since receipt of last RUS grant by applicant.

(ii) Current annual corporation report, Certificate of Good Standing, or statement they are not required.

(iii) Certified list of directors/officers with their respective terms.

(b) Evidence of tax exempt status from the Internal Revenue Service (IRS).

(c) Narrative of applicant's experience in providing services similar to those proposed. Provide brief description of successfully completed projects including the need that was identified and objectives accomplished.

(d) Latest financial information to show the applicant's financial capacity to carry out the proposed work. A current audit report is preferred; however applicants can submit a balance sheet and an income statement in lieu of an audit report.

(e) List of proposed services to be provided.

(f) Estimated breakdown of costs (direct and indirect) including those to be funded by grantee as well as other sources. Sufficient detail should be provided to permit the approval official to determine reasonableness, applicability, and allowability.

(g) Evidence that a Financial Management System is in place or proposed.

(h) Documentation on each of the priority ranking criteria listed in 7 CFR 1775, § 1775.11 as follows:

(i) List of the associations to be served and the State or States where assistance will be provided. Identify associations by name, or other characteristics such as size, income, location, and provide MHI and population.

(ii) Description of the type of technical assistance and/or training to be provided and the tasks to be contracted.

(iii) Description of how the project will be evaluated and provide clearly stated goals and the method proposed to measure the results that will be obtained.

(iv) Documentation of need for proposed service. Provide detailed explanation of how the proposed services differ from other similar services being provided in the same area.

(v) Personnel on staff or to be contracted to provide the service and their experience with similar projects.

(vi) Statement indicating the number of months it takes to complete the project or service.

(vii) Documentation on cost effectiveness of project. Provide the cost per association to be served or proposed cost of personnel to provide assistance.

(viii) Other factors for consideration such as emergency situation, training need identified, health or safety problems, geographic distribution, Rural Development Office recommendations, *etc.*

4. Applicants must also submit a work plan/project proposal that will outline the project in sufficient detail to provide a reader with a complete understanding of how the proposed Technical Assistance and Training grant will address the needs of the rural area. The proposal should cover the following elements (in addition to information contained in 7 CFR part 1775, sections 1775.10 and 1775.11):

(a) Present a brief project overview. Explain the purpose of the project, how it relates to the RUS purposes, how you will carry out the project, what the project will produce, and who will direct it.

(b) Describe why the project is necessary. Describe how eligible rural communities will benefit from the technical assistance. Describe the service area and how the technical assistance will benefit the rural communities.

(c) Clearly state your goals. Your objectives should clearly describe the goals, be concrete and specific enough to be quantitative or observable. They should also be feasible and relate to the purpose of the proposed technical assistance and training.

(d) In addition to completing the standard application forms, you must also submit supplementary materials, as follows:

(i). Demonstrate that your organization is legally recognized under State and Federal law. Satisfactory documentation includes, but is not limited to, certificates from the Secretary of State, or copies of State statutes or laws establishing your organization. Letters from the IRS awarding tax-exempt status are not considered adequate evidence.

(ii). Submit a certified list of directors and officers with their respective terms.

(iii). Submit evidence of tax-exempt status from the Internal Revenue Service.

(iv). You must disclose debarment and suspension information required in accordance with 7 CFR 3017, § 3017.335, if it applies. The section heading is ''What information must I provide before entering into a covered transaction with the Department of Agriculture?'' It is part of the Department of Agriculture's rules on Government-wide Debarment and Suspension.

(v). Submit the most recent audit of your organization.

XII. Application Review Information

A. Single State Applications

1. Grant applications submitted at the State level will receive a letter acknowledging receipt and confirmation that all information required for a full application was included in the packet. The State will notify the applicant of missing information. The applicant will have 14 business days to respond.

2. The State Office will review applications for eligibility. Those applicants that are deemed ineligible will be notified. Applicants deemed eligible will be forwarded to the National Office for funding consideration.

3. The National Office will review all applications received from State Offices. Applications will compete on a priority basis and will be scored and ranked. The applications receiving the highest scores and subject to the availability of funds will be selected for final processing. The National Office will send these applications back to the State Office for processing. The State Office will notify the applicant(s) that they have been selected for funding.

4. Applicants not selected for funding due to low priority rating shall be notified by the State Office.

B. National and Multi-State Applications

1. National and multi-State applications submitted to the National Office will receive a letter acknowledging receipt and confirmation that all information required for a full application was included in the packet. The National Office shall notify the applicant of missing information. The applicant will have 14 business days to respond.

2. The National Office will review applications for eligibility. Those applications that are deemed ineligible will be notified. Applications deemed eligible will be reviewed and given a rating score. Applications receiving the highest scores will be grouped with those received from State Offices for funding consideration.

3. The National Office will review all applications received. Applications will compete on a priority basis and will be scored and ranked. The applications receiving the highest scores and subject to the availability of funds will be notified by the National Office that they have been selected for funding. The National Office shall conduct final processing of multi-State and national applications.

4. Multi-State and National applicants not selected for funding due to low priority rating will be notified by the National Office.

C. Low Priority Applications

Applications that cannot be funded in the fiscal year received will not be retained for consideration in the following fiscal year.

D. All applications that are complete and eligible will be scored based on the criteria outlined in 7 CFR 1775, § 1775.10, § 1775.11 and RUS Guide 1775–2. After each application is scored they will be ranked competitively. The categories for scoring criteria used are the following:

Scoring criteria	Points
1. Scope of assistance (national, multi-State, and single State/area)	Up to 10.
2. Degree of expertise	Up to 5.
3. Percentage of applicant's contributions	Up to 10.
4. Applicant Resource (staff vs. contract personnel)	Up to 10.
5. Needs Assessment: Extent that problems/issues are clearly defined and supported by data	Up to 15.
6. Description of the service area, particularly the demographics of the rural communities being served (population and MHI of the communities).	Up to 25.
7. Goals/Objectives: Goals/objectives are clearly defined, are tied to need, and are measurable	Up to 15.
8. Extent to which the work plan clearly articulates a well thought out approach to accomplishing objectives; and clearly defines who will be served by the study.	Up to 40.
9. Extent to which the evaluation methods are specific to the program, clearly defined, measurable, with expected project outcomes.	Up to 20.
10. Type of technical assistance applicant is providing	Up to 20.

Scoring criteria	Points
11. Project duration	Up to 5.
12. Sustainability	Up to 10.
13. Prior Grant Years Funded	Up to 15.
14. Administrative Discretion	Up to 15.

XIII. Award Administration Information

A. RUS will rank all qualifying applications by their final score. Applications will be selected for funding, based on the highest scores and the availability of funding for the Technical Assistance and Training grants.

B. In making our decision about your application, RUS may determine that your application is:

1. Eligible and selected for funding;

2. Eligible but offered fewer funds than requested;

3. Eligible but not selected for funding; or

4. Ineligible for the grant.

C. In accordance with 7 CFR part 1900, subpart B, you generally have the right to appeal adverse decisions. Some adverse decisions cannot be appealed. For example, if you are denied RUS funding due to a lack of funds available for the grant program, this decision cannot be appealed. However, you may make a request to the National Appeals Division (NAD) to review the accuracy of our finding that the decision cannot be appealed. The appeal must be in writing and filed at the appropriate Regional Office, which can be found at *http://www.nad.usda.gov/offices.htm* or by calling (703) 305–1166.

D. Applicants selected for funding will complete a grant agreement, which outlines the terms and conditions of the grant award.

E. Grantees will be reimbursed as follows:

1. SF–270, ''Request for Advance or Reimbursement,'' will be completed by the grantee and submitted to either the State or National Office not more frequently than monthly.

2. Upon receipt of a properly completed SF–270, payment will ordinarily be made within 30 days.

F. Any change in the scope of the project, budget adjustments of more than 10 percent of the total budget, or any other significant change in the project must be reported to and approved by the approval official by written amendment to RUS Guide 1775–1 (Grant Agreement). Any change not approved may be cause for termination of the grant.

G. Project Reporting

1. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved.

2. SF–269, ''Financial Status Report (short form),'' and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each quarter.

3. A final project performance report will be required with the last SF–269 due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

4. All multi-State grantees are to submit an original of each report to the National Office. Grantees serving only one State are to submit an original of each report to the State Office. The project performance reports should detail, preferably in a narrative format, activities that have transpired for the specific time period.

H. The grantee will provide an audit report or financial statements as follows:

1. Grantees expending $500,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with OMB Circular A–133.

The audit will be submitted within 9 months after the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

2. Grantees expending less than $500,000 will provide annual financial statements covering the grant period, consisting of the Grantee's statement of income and expense and balance sheet signed by an appropriate official of the Grantee. Financial statements will be submitted within 90 days after the grantee's fiscal year.

XIV. Agency Contacts

A. *Web site: http://www.usda.gov/rus/water.* The RUS' Web site maintains up-to-date resources and contact information for Technical Assistance and Training Grants program.

B. *Phone:* 202–720–9583.

C. *Fax:* 202–690–0649.

D. *E-mail: anita.obrien@wdc.usda.gov.*

E. *Main point of contact:* Anita O'Brien, Loan Specialist, Water and Environmental Programs, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture.

Dated: October 19, 2009.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. E9–29466 Filed 12–9–09; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of closed portions of meeting.

SUMMARY: On November 12, 2009 (74 FR 58241) the U.S. Commission on Civil Rights announced a business meeting to be held on Friday, November 20, 2009 at the Commission's headquarters. On Friday, November 20, 2009 the Commission's General Counsel, David Blackwood, certified that portions of the meeting were appropriate to be closed pursuant to exemptions 2, 6, 9, and 10 of 45 CFR 702.53. A majority of the Commissioners present voted to close portions of the meeting pursuant to this certification. The Presiding Officer, Chairman Gerald Reynolds, issued a statement setting forth the time and location of the closed meeting and the persons present in closed session. A complete verbatim transcript and/or electronic recording of the closed proceedings will be maintained by the Commission.

The decision to close portions of the meeting was too close in time to the day of the meeting for the publication of a revised notice to appear in advance of the scheduled meeting date. The details of the meeting, including the portions which were closed to the public, are:

DATE AND TIME: Friday, November 20, 2009; 9:30 a.m. EST.

PLACE: 624 9th St., NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public, except where noted otherwise.

I. Approval of Agenda.

II. Program Planning.

- Motion Regarding Special Assistant GS Level. [Discussion of this agenda item was held in closed session.]

- Update on Status of Title IX Project. [Discussion of this agenda item was held in closed session.]
- Update on Status of 2010 Enforcement Report. [Discussion of this agenda item was held in closed session.]
- National Conference Update.
- Approval of Concept Papers for FY 2010 Briefing Topics.
- Amendments to Title IX Briefing Report.
- Approval of MEPA Briefing Report.

III. State Advisory Committee Issues.
- Iowa SAC.
- Massachusetts SAC.

IV. Management & Operations.
- Motion To Permit Commissioners' Special Assistants To Join Commissioners' Line for Telephonic Meetings.

V. Approval of September 24, October 8, October 15 and October 30 Meeting Minutes.
VI. Staff Director's Report.
VII. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. *TDD:* (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. *TDD:* (202) 376–8116.

Dated: December 8, 2009.

David Blackwood,

General Counsel.

[FR Doc. E9–29577 Filed 12–8–09; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 55–2009]

Foreign-Trade Zone 74—Baltimore, MD: Application for Subzone Michelin North America, Inc. (Tire Distribution and Wheel Assembly); Elkton, MD

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Baltimore, grantee of FTZ 74, requesting special-purpose subzone status for the distribution facility of Michelin North America, Inc. (MNA), located in Elkton, Maryland. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 3, 2009.

MNA's facility (130 employees, approximately 71 acres/756,600 enclosed square feet) is located at 515 Fletchwood Road, Elkton, Maryland. The facility is primarily used for the storage and distribution of tires and tire accessories (duty rates range from duty-free to 4.0%); however, the applicant is also requesting manufacturing authority to perform wheel assembly at the proposed subzone.

On its distribution activity, FTZ procedures could exempt MNA from customs duty payments on the foreign products that are exported (3 to 7% of shipments). On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the facility and entered for consumption. Certain tires from China are temporarily subject to additional duties imposed in a Section 421 safeguard case; such tires will be admitted to the proposed subzone under privileged foreign status (19 CFR 146.41) or domestic (duty paid) status (19 CFR 146.43).

As noted above, the applicant is also requesting to perform wheel assembly (up to 100,000 units annually) using domestic and foreign components on behalf of auto manufacturer clients. Foreign-sourced components include tires (HTSUS 4011.10, 4011.20, 4011.61, 4011.62, 4011.63, 4011.92, 4011.93, 4011.94, 4011.99, duty-free to 4.0%), wheel rims (HTSUS 8708.70, duty-free to 2.5%), flaps (HTSUS 4012.90, duty-free to 4.2%), valves (HTSUS 8481.80, 2% to 5.6%), tubes (HTSUS 4013.10, 3.7%), gaskets (HTSUS 4016.93, 2.5%), sensors (HTSUS 8525.10, duty-free), and nuts (HTSUS 7318.16, duty-free).

FTZ procedures could exempt MNA from customs duty payments on the foreign components used in production for export to non-NAFTA countries. On shipments for U.S. consumption and to NAFTA markets, MNA could elect the wheel assembly duty rate (generally dutiable as an auto part—2.5%) for the foreign components (mostly tires, dutiable at 4%) listed above. The auto part duty rate (2.5%) would apply if the wheel assemblies are shipped via zone-to-zone transfer to U.S. motor vehicle assembly plants with subzone status.

FTZ designation would further allow Michelin to realize logistical benefits through the use of certain customs procedures and duty savings on scrap and waste. The request indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 8, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 23, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: December 3, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–29472 Filed 12–9–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars from Turkey: Notice of Court Decision Not in Harmony with Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 15, 2009, and November 23, 2009, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) results of redetermination pursuant to the CIT's remand orders in *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, Court No. 05–00613, Slip Op. 09–55 (June 15, 2009) and *Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, Court No. 05–00613, Slip Op. 09–133 (Nov. 23, 2009). *See* Results of Redetermination Pursuant to Remand, dated March 3, 2008, and Results of Redetermination Pursuant to Remand, dated September 8, 2009 (found at *http://ia.ita.doc.gov/remands*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir.

1990) (*Timken*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey covering the period of review (POR) of April 1, 2003, through March 31, 2004. *See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665 (Nov. 8, 2005) (*Final Results*).

EFFECTIVE DATE: December 10, 2009.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration-International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 2005, the Department published its final results in the antidumping duty administrative review of rebar from Turkey covering the POR of April 1, 2003, through March 31, 2004. *See Final Results*. In the *Final Results*, the Department followed its normal practice of using POR weighted-average costs in its margin calculations for all companies, instead of quarterly-average costs as requested by one respondent, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas). In addition, in the *Final Results*, the Department based the U.S. date of sale for each respondent on the earlier of shipment date or invoice date, contrary to Habas' request to use contract date as its U.S. date of sale.

On November 15, 2007, the CIT remanded two issues to the Department for reconsideration related to the *Final Results* for Habas:1) using POR weighted-average costs versus quarterly-average costs in its margin calculations; and 2) basing the U.S. date of sale on invoice date versus contract date. On March 3, 2008, the Department issued its final results of redetermination pursuant to the CIT's November 15, 2007, ruling.

On June 15, 2009, the CIT affirmed the Department's determination to use contract date as the date of sale for Habas' U.S. sales. However, the CIT also determined that the Department's *Final Results* were not supported by substantial evidence on the record with respect to the agency's cost test. Thus, it remanded to the Department once again whether it is appropriate to use quarterly or POR-average costs for Habas in this case.

On September 8, 2009, the Department issued its final results of redetermination pursuant to the CIT's June 15, 2009, ruling. The remand redetermination explained that, in accordance with the CIT's instructions, the Department reconsidered its use of POR cost data and as a result it recalculated the margin for Habas using quarterly costs. Further, the Department adopted an alternative methodology for the recovery-of-cost test and eliminated the 90/60 day window period for price-to-price comparisons to prevent distortions as a result of the use of quarterly costs.

The Department's redeterminations resulted in changes to the *Final Results* weighted-average margin for Habas from 26.07 percent to 5.58 percent.

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decision on November 23, 2009, constitutes a final decision of that court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise during the POR from Habas based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: December 4, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–29468 Filed 12–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR39

Endangered and Threatened Species; Recovery Plans; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of public comment period; correction.

SUMMARY: On November 24, 2009, we, NMFS, announced an extension of the public comment period for the Draft Central Valley Salmon and Steelhead Recovery Plan (Draft Plan). The Draft Plan addresses the Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU), the Central Valley spring-run Chinook salmon (*O. tshawytscha*) ESU, and the Distinct Population Segment (DPS) of Central Valley Steelhead (*Oncorhynchus mykiss*). In response to requests for an extension of the public comment period, we extended the comment period for the proposed action an additional 60 days, but the new comment due date and zip code for written comments were incorrect. The correct end date for submission of comments is February 3, 2010, and correct zip code for written comments is 95814.

FOR FURTHER INFORMATION CONTACT: Howard Brown, NMFS Sacramento River Basin Branch Chief at (916) 930–3608 or Brian Ellrott at (916) 930–3612.

SUPPLEMENTARY INFORMATION:

Background

On November 24, 2009, we, NMFS, announced an extension of the public comment period for the Draft Central Valley Salmon and Steelhead Recovery Plan (Draft Plan) (74 FR 61329). NMFS inadvertently published February 3, 2009 for the comment period end date, and the correct end date should read, in all instances, February 3, 2010. NMFS also inadvertently published an incorrect mailing address zip code, and the correct zip code is 95814. The Draft Plan addresses the Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU), the Central Valley spring-run Chinook salmon (*O. tshawytscha*) ESU, and the Distinct Population Segment (DPS) of Central Valley Steelhead (*Oncorhynchus mykiss*). In response to requests for an extension of the public comment period, we extended the comment period for the

proposed action an additional 60 days, but the new comment due date and zip code for written comments were incorrect. On page 61329, third column, under **DATES**, and on page 61330, first column under **SUPPLEMENTARY INFORMATION**, the correct date that comments should be received by is February 3, 2010. Also on page 61329, third column under **ADDRESSES**, the correct zip code is 95814.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 7, 2009.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–29477 Filed 12–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007–2008 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 9, 2009, the Department of Commerce published the preliminary results of the eighth administrative review of the antidumping duty order on certain polyester staple fiber from the Republic of Korea. The review covers the shipments of subject merchandise to the United States by Huvis Corporation. Based on our analysis of the comments received from interested parties, we have made no changes for the final results. The final weighted-average dumping margins are listed below in the ''Final Results of the Review'' section of this notice.

EFFECTIVE DATE: December 10, 2009.

FOR FURTHER INFORMATION CONTACT: Seth Isenberg or Brandon Farlander, Office 1, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0588 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 2009, the Department of Commerce (''the Department'') published *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281 (June 9, 2009) (''*Preliminary Results*'') in the **Federal Register**.

From July 27 to July 31, 2009, the Department conducted a verification of Huvis Corporation's (''Huvis'') submitted cost information. The Department reported its findings on September 15, 2009. *See* Memorandum to the File, ''Verification of the Cost Response of Huvis Corporation in the Antidumping Review of Certain Polyester Staple Fiber from the Republic of Korea'' dated September 15, 2009. This report is on file in the Department's Central Records Unit (''CRU'') in room 1117 of the main Department building.

On September 18, 2009, the Department published in the **Federal Register** an extension of the time limit for the completion of the final results of this review until no later than December 7, 2009, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213(h)(2). *See Certain Polyester Staple Fiber from the Republic of Korea: Extension of Time Limit for the Final Results of the 2007–2008 Antidumping Duty Administrative Review*, 74 FR 47919 (September 18, 2009).

On September 28, 2009, Huvis filed a case brief. On October 5, 2009, Invista, S.a.r.L., and DAK Americas, LLC (collectively, ''the petitioners'') filed a rebuttal brief.

Scope of the Order

For the purposes of the order, the product covered is certain polyester staple fiber (''PSF''). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 5503.20.00.25 is specifically excluded from the order. Also specifically excluded from the order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-;melt PSF is excluded from the order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to the order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Period of Review

The period of review (''POR'') is May 1, 2007, through April 30, 2008.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the December 7, 2009, Issues and Decision Memorandum for the Eighth Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the Republic of Korea (''Decision Memorandum''), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web. at *http://ia.itadoc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Fair Value Comparisons

To determine whether sales of PSF from the Republic of Korea to the United States were made at less than normal value (''NV''), we compared export price (''EP'') to the NV. We calculated EP, NV, constructed value (''CV''), and the cost of production (''COP''), based on the same methodologies used in the *Preliminary Results*.

Final Results of the Review

We find that the following margin percentage exists for the period May 1, 2007, through April 30, 2008:

Manufacturer	Weighted-average margin percentage
Huvis Corporation	1.50%

Assessment Rates

Huvis submitted evidence demonstrating that it was the importer of record for certain of its POR sales. We examined the customs entry documentation submitted by Huvis and

tied it to the U.S. sales listing. Therefore, for purposes of calculating the importer-specific assessment rates, we have treated Huvis as the importer of record for certain POR shipments. Pursuant to 19 CFR 351.212(b)(1), for all sales where Huvis is the importer of record, Huvis submitted the reported entered value of the U.S. sales and we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding sales where Huvis was not the importer of record, we note that Huvis did not report the entered value for the U.S. sales in question. Accordingly, we have calculated importer-;specific per-;unit duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on the estimated entered value.

Pursuant to 19 CFR 351.106(c)(2), we will instruct U.S. Customs and Border Protection (''CBP'') to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department intends to issue assessment instructions directly to CBP 15 days after publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. *Id.*

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of certain PSF from the Republic of Korea entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rate listed above (except no cash deposit will be required if a company's weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent), (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, a prior review, or the investigation, the cash deposit rate will be 7.91 percent, the all-others rate established in *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 68 FR 74552 (December 24, 2003). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 2, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Decision Memorandum

Comment 1: Valuation of Upstream Inputs Consumed in Qualified Terephthalic Acid

Comment 2: Offsetting Negative Margins

[FR Doc. E9–29467 Filed 12–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–817]

Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 5, 2009, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from Thailand. The period of review is November 1, 2007, through October 31, 2008. We received comments from interested parties, but have made no changes to the margin for the final results. The final margin for the respondent is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: December 10, 2009.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408 or (202) 482–0469, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2009, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain hot-;rolled steel from Thailand. *See Certain Hot-Rolled Carbon Steel Flat Products*

from Thailand, 74 FR 39047 (August 5, 2009) (*Preliminary Results*).

On September 4, 2009, we received a case brief from the sole respondent, G Steel Public Company Limited (G Steel) and G J Steel Public Company Limited (G J Steel). On September 11, 2009, we received rebuttal briefs from petitioner United States Steel Corporation (U.S. Steel) and domestic interested party Nucor Corporation (Nucor). No public hearing was held. On September 14, 2009, the Department returned G Steel and G J Steel's case brief to the company's legal counsel as the brief contained new factual information. On September 15, 2009, G Steel and G J Steel refiled the case brief, omitting the new factual information.

Period of Review

The period of review is November 1, 2007, through October 31, 2008.

Scope of the Order

For purposes of the order, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

-Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).

-Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.

-Ball bearing steels, as defined in the HTSUS.

-Tool steels, as defined in the HTSUS.

-Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

-ASTM specifications A710 and A736.

-USS abrasion-resistant steels (USS AR 400, USS AR 500).

-All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

-Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under review is dispositive.

Analysis of Comments Received

All issues raised in the briefs are addressed in the ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,'' dated December 3, 2009, (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room 1117 of the Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://www.trade.gov/ia/*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made no changes to the Preliminary Results for G Steel and G J Steel. *See* Issues and Decision Memorandum for discussion of the issues raised by parties.

Final Results of Review

In the *Preliminary Results*, we determined that G J Steel is the successor-in-interest to the former Nakornthai Strip Mill Public Company Limited (Nakornthai) for purposes of this proceeding and application of the antidumping law. We did not receive comments on this issue and have no reason to change our findings from the *Preliminary Results*. For a complete discussion of our successorship analysis, *see Preliminary Results*, 74 FR at 39051.

The Department also determined that G Steel and G J Steel should be collapsed and treated as a single entity for purposes of this proceeding and application of the antidumping law. *Id.* at 39050. We received comments on this issue which are addressed in the Issues and Decision Memorandum. We have concluded for these Final Results that G Steel and G J Steel should continue to be collapsed and treated as a single entity for purposes of this proceeding and application of the antidumping law.

Finally, the Department preliminarily determined to apply an adverse facts available (AFA) rate of 20.30 percent to the collapsed G Steel and G J Steel entity. *Id.* at 39050. We also received comments on this issue, which are addressed in the Issues and Decision Memorandum. The Department has concluded that the margin for G Steel and G J Steel should be based upon AFA.

Accordingly, we determine that G J Steel is the successor-in-interest to Nakornthai, and that the AFA rate of 20.30 percent should be applied to the G Steel/G J Steel entity.

We determine therefore that the following weighted-average margin exists:

Manufacturer/Exporter	Weighted Average Margin (percent)
G Steel and G J Steel ..	20.30 percent

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). Accordingly, we will instruct CBP to assess duties upon all entries of merchandise produced or exported by G Steel or G J Steel at a rate of 20.30 percent *ad valorem*. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification applies to POR entries of subject merchandise produced by companies examined in this review where the companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of certain hot-rolled carbon steel flat products from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) for companies covered by this review, the cash deposit rate will be the rate listed above; (2) for previously reviewed or investigated companies other than those covered by this review, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the investigation, the cash deposit rate will be 3.86 percent,[1] the all-others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

[1] In the *Preliminary Results*, the Department inadvertently indicated the cash deposit all others rate as 4.44 percent. The rate should be 3.86 percent as specified in the Antidumping Duty Order. *See Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 59562 (November 29, 2001).

Administrative Protective Order

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 3, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix: Issues Raised in Decision Memorandum

Comment 1: Collapsing of G Steel and G J Steel

Comment 2: Application of Adverse Facts Available to G Steel and G J Steel

Comment 3: Selection of Adverse Facts Available Rate for G Steel and G J Steel

[FR Doc. E9–29471 Filed 12–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 2, 2009, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) for Linyi City Kangfa Foodstuff Drinkable Co., Ltd. (Kangfa). *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review,* 73 FR 50946 (October 2, 2009) (*Preliminary Results*). We gave interested parties an opportunity to comment on the

Preliminary Results, and received no comments. We also made no changes to the preliminary results for these final results. Therefore, the final results do not differ from the preliminary results.

DATES: *Effective Date:* December 10, 2009.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION: We published the preliminary results for this new shipper review on October 2, 2009. In the preliminary results the Department stated that interested parties were to submit case briefs within 30 days of publication of the preliminary results and rebuttal briefs within five days after the due date for filing case briefs. *See Preliminary Results* at 50951. No interested party submitted a case or rebuttal brief.

Period of Review

The period of review (POR) is February 1, 2008, through January 31, 2009.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species Agaricus bisporus and Agaricus bitorquis. ''Certain Preserved Mushrooms'' refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.[1]

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms;'' (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the preliminary results, we found that Kangfa demonstrated its eligibility for separate rate status. We received no comments from interested parties regarding Kangfa's separate rate status. In these final results of review, we continue to find the evidence placed on the record by Kangfa demonstrates an absence of government control, both in law and in fact, with respect to Kangfa's exports of the merchandise under review. Thus, we have determined that Kangfa is eligible to receive a separate rate.

Changes Since the Preliminary Results

We made no changes to the preliminary results.

Combination Rate

In new shipper reviews, the Department may, pursuant to 19 CFR 351.107(b), establish a combination cash deposit rate for each combination of the exporter and its supplying producer(s). *See Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 at 72140 (December 4, 2002); *Notice of Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios From Iran,* 68 FR 353 at 354 (January 3, 2003); and *Certain Forged Stainless Steel Flanges From India: Final Results of Antidumping Duty New Shipper Review,* 68 FR 351 (January 3, 2003). The Department has determined that a combination rate is appropriate in this case, as Kangfa is both the producer and exporter of the subject merchandise. Therefore, the Department will include in its cash deposit instructions to U.S. Customs and Border Protection (CBP) appropriate language to enforce these final results of new shipper review on the basis of a combination rate involving Kangfa as both the producer and exporter of the subject merchandise.

Final Results of Review

The Department has determined that the following margin exists for the period February 1, 2008, through January 31, 2009:

Exporter/Manufacturer	Weighted-Average margin (Percentage)
Linyi City Kangfa Foodstuff Drinkable Co., Ltd.	0.00

Assessment Rates

Pursuant to these final results, the Department determined, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions for Kangfa to CBP 15 days after the date of publication of these final results of new shipper review. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific (or customer) assessment rate calculated in the final results of this review is above *de minimis.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of new shipper review for all shipments of subject merchandise by Kangfa entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C)

[1] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat* v. *United States,* 396 F.3d 1378 (Fed. Cir. 2005).

of the Tariff Act of 1930, as amended (the Act): (1) For subject merchandise produced and exported by Kangfa, the cash deposit rate will be zero; (2) for subject merchandise exported by Kangfa, but not manufactured by Kangfa, the cash deposit rate will continue to be the PRC-wide rate (*i.e.,* 198.63 percent); and (3) for subject merchandise manufactured by Kangfa, but exported by any party other than Kangfa, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements will remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.214(h).

Dated: December 4, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–29469 Filed 12–9–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801]

Ball Bearings and Parts Thereof From France: Final Results of Changed-Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has determined, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), that SKF Aeroengine France S.A.S.U. (SKF Aeroengine) is the successor-in-interest to SNFA S.A.S.U. and, as a result, should be accorded the same treatment as SNFA S.A.S.U.

DATES: *Effective Date:* December 10, 2009.

FOR FURTHER INFORMATION CONTACT: Kristin Case or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 482–3174 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping duty order on ball bearings and parts thereof from France on May 15, 1989. See *Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof From France,* 54 FR 20902 (May 15, 1989). On August 11, 2000, the Department revoked the order, effective May 1, 1999, with respect to sales of ball bearings by SNFA S.A. (subsequently SNFA S.A.S.U.) (SNFA France). See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part,* 65 FR 49219, 49221 (August 11, 2000).

On March 2, 2007, pursuant to a request from SNFA France, SKF France S.A., and SKF Aerospace France S.A.S., we initiated a changed-circumstances review in order to determine whether SNFA France was a successor-in-interest to SKF France S.A. following SNFA France's acquisition by that company or, alternatively, that post-acquisition SNFA France was the successor-in-interest to the pre-acquisition SNFA France. See *Ball Bearings and Parts Thereof from France: Initiation of an Antidumping Duty Changed-Circumstances Review,* 72 FR 9513 (March 2, 2007). During the course of the changed-circumstances review, the companies informed the Department that SNFA France would be changing its name to SKF Aeroengine.

On June 29, 2007, we initiated an administrative review of the antidumping duty order on ball bearings and parts thereof from France for the period May 1, 2006, through April 30, 2007, with respect to SKF France S.A. and SKF Aerospace France S.A.S. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review,* 72 FR 35690 (June 29, 2007). On October 26, 2007, we rescinded the changed-circumstances review initiated on March 2, 2007, and explained that, because we had initiated an administrative review with respect to SKF France S.A. and SKF Aerospace France S.A.S., we would address any issues that had arisen during the course of the changed-circumstances review in the context of the administrative review. See *Ball Bearings and Parts Thereof from France and Italy: Rescission of Antidumping Duty Changed-Circumstances Reviews,* 72 FR 60798, 60799 (October 26, 2007). In the final results of the 2006/07 administrative review, we determined that post-acquisition SNFA France was the successor-in-interest to pre-acquisition SNFA France and that SNFA France had not changed its name to SKF Aeroengine until after the period of review. See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 12 (*AFBs Final Results*).

On February 6, 2009, SKF Aeroengine requested that, because the Department appeared to have left open the effect of the name change from SNFA France to SKF Aeroengine on its determination in *AFBs Final Results,* the Department either confirm that its determination encompassed the name change or, in the alternative, the Department initiate a changed-circumstances review to determine whether SKF Aeroengine is the successor-in-interest to SNFA France. On March 30, 2009, we initiated a changed-circumstances review. See *Ball Bearings and Parts Thereof from France: Initiation of Antidumping Duty*

Changed-Circumstances Review, 74 FR 14107 (March 30, 2009). On June 9, 2009, we preliminarily found that SKF Aeroengine is the successor in interest to SNFA France. See *Ball Bearings and Parts Thereof from France: Preliminary Results of Changed-Circumstances Review,* 74 FR 27280 (June 9, 2009). We received a case brief from The Timken Company and a rebuttal brief from SKF Aeroengine, SKF France S.A., and SKF Aerospace France S.A.S. We did not hold a hearing as none was requested.

Scope of the Order

The products covered by the order are ball bearings (other than tapered roller bearings) and parts thereof. These products include all bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

As a result of recent changes to the Harmonized Tariff Schedule, effective February 2, 2007, the subject merchandise is also classifiable under the following additional HTS item numbers: 8708.30.5090, 8708.40.7500, 8708.50.7900, 8708.50.8900, 8708.50.9150, 8708.50.9900, 8708.80.6590, 8708.94.75, 8708.95.2000, 8708.99.5500, 8708.99.68, and 8708.99.8180.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comment Received

The issues raised in the case briefs by parties in this review are addressed in the Issues and Decision Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated concurrently with this notice (Decision Memo), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memo and attached to this notice as an Appendix. The Decision Memo, which is a public document, is on file in the Central Records Unit, main Department of Commerce building, Room 1117, and is accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Changed-Circumstances Review

For the reasons stated in the preliminary results, we continue to find that SKF Aeroengine is the successor-in-interest to SNFA France and, as a result, should be accorded the same treatment as SNFA France. We will instruct U.S. Customs and Border Protection to liquidate, without regard to antidumping duties, all unliquidated entries produced and exported by SKF Aeroengine which were entered, or withdrawn from warehouse, for consumption on or after September 3, 2007, the date of SNFA France's name change to SKF Aeroengine. See *Stainless Steel Wire Rod from Italy: Notice of Final Results of Changed Circumstances Antidumping Duty Review,* 71 FR 24643, 24644 (April 26, 2006); see also *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews,* 64 FR 66880, 66881 (November 30, 1999).

Notification

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 and 351.221.

Dated: December 4, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

1. Successorship
2. Applicable Cash-Deposit Rate

[FR Doc. E9–29470 Filed 12–9–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT24

Fisheries of the South Atlantic and Gulf of Mexico; Southeastern Data, Assessment, and Review (SEDAR)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR Methods and Procedures Workshop 4: Evaluating Assessment Uncertainty.

SUMMARY: SEDAR procedural workshops provide an opportunity for focused discussion and deliberation on topics that arise in multiple assessments and are structured to develop best practices for addressing common issues across assessments. The SEDAR Steering Committee agreed that the three completed procedural workshops were effective and that similar workshops should be held to address other issues that affect multiple assessments. Continuing to address such global issues is recognized as an important to continuing improvements in efficiency and quality.

The 4th procedural workshop will consider methods of addressing uncertainty in SEDAR assessments, including topics such as developing appropriate confidence intervals in both parameter estimates and projection outputs, methods of characterizing and expressing assessment uncertainty beyond that reflected in confidence intervals, use of sensitivity analyses and recommendations on standard sensitivities, and relating uncertainty to overall risk evaluation and especially the risk of overfishing occurring. Participants will prepare a SEDAR procedures document addressing their recommendations that will be used to guide future SEDAR assessments. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR Uncertainty Procedural Workshop will take place February 22–26, 2010; SEDAR Uncertainty Procedural Workshop

Schedule: February 22, 2008: 1 p.m. - 8 p.m.; February 23–25, 2010: 8 a.m.–8 p.m.; February 26, 2010: 8 a.m. - 1 p.m.

ADDRESSES: The SEDAR Uncertainty Procedural Workshop will be held at the Charlotte Marriott SouthPark, 2200 Rexford Road, Charlotte, NC 28211; telephone: (800) 228–9290 or (704) 364–8220.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) Data Workshop, (2) Assessment Process and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary Report documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

Each SEDAR workshop panel is asked to provide research and monitoring recommendations to improve future assessments and feedback on the process to help improve SEDAR itself. Over time, certain key topics emerge that reveal a research need or procedural suggestion that is common to multiple assessments. The SEDAR Steering Committee endorses procedural workshops such as that noticed here to address those issues that affect multiple assessments and require more time and resources to resolve than are typically available during the normal assessment development process. The goal of these workshops is to develop guidelines and practices that will increase the efficiency of subsequent SEDAR assessments.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: December 4, 2009.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–29386 Filed 12–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Intent To Grant an Exclusive License; University of Maryland

AGENCY: National Security Agency, DoD.

ACTION: Notice.

SUMMARY: The National Security Agency hereby gives notice of its intent to grant the University of Maryland a revocable, non-assignable, exclusive license to practice the following Government-Owned invention as described in U.S. Provisional Patent Application Serial No. 61/119,848 entitled: ''RF Power Harvesting Circuit Design,'' filed 04 December 2008, and any related non-provisional patent application and all Letters Patent issuing thereon, and any continuation, continuation-in-part or division of said non-provisional patent application and any reissue or extension of said Letters Patent, in the field of RF Power Harvesting Technologies. The above-mentioned invention is assigned to the United States Government as represented by the National Security Agency.

DATES: Written objections along with any supporting evidence specific to the granting of this license must be received by December 28, 2009.

ADDRESSES: Written objections must be sent to the National Security Agency Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755–6541.

FOR FURTHER INFORMATION CONTACT: Marian T. Roche, Director, Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755–6541, telephone (443) 479–9569.

Dated: December 4, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–29379 Filed 12–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (title 5, United States Code (U.S.C.), Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces that the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel) will meet on January 14, 2010. During the meeting the Panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics Committee regarding the Uniform Formulary.

DATES: An open meeting will be held from 9 a.m. to 5 p.m. on January 14, 2010.

A closed Administrative Work Meeting will be held from 8 a.m. to 9 a.m.

ADDRESSES: The meetings will be held at the Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Thomas Bacon, Designated Federal Officer, Uniform Formulary Beneficiary Advisory Panel, 5111 Leesburg Pike, Skyline 5, Suite 810, Falls Church, VA 22041–3206; *Telephone:* (703) 681–2890, *Fax:* (703) 681–1940; *E-mail: Baprequests@tma.osd.mil.*

SUPPLEMENTARY INFORMATION:

Meeting Agenda

Sign-In; Welcome and Opening Remarks; Public Citizen Comments; Scheduled Therapeutic Class Reviews—Phosphodiesterase Type -5 Inhibitors and New Drugs in Previously Reviewed Classes; Drugs recommended for non-formulary placement due to non-compliance with Fiscal Year 2008, National Defense Authorization Act, Section 703; Panel Discussions and Vote, and comments following each therapeutic class review.

Meeting Accessibility

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly.

Administrative Work Meeting

Prior to the public meeting the Panel will conduct an Administrative Work Meeting from 8 a.m. to 9 a.m. to discuss administrative matters of the Panel. Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Public Comments

In addition to written statements, the Panel will set aside 1 hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's Designated Federal Officer will have a ''Sign-Up Roster'' available at the Panel meeting, for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1 hour time period no further public comments will be accepted. Anyone who signs up to address the Panel but is unable to do so due to the time limitation may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation. Accordingly, the Panel recommends that individuals and interested groups consider submitting written statements instead of addressing the Panel.

Dated: December 4, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–29380 Filed 12–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy. U.S. Patent No. 7,515,096: Program to Generate an Aircrew Display Aid to Assess Jam Effectiveness, Navy Case No. 98911// U.S. Patent No. 7,511,657: Aircrew Display Aid to Assess Jam Effectiveness, Navy Case No. 98910//U.S. Patent application Serial Number 12/040,412: Dynamic Replanning Algorithm for Aircrew Display Aid to Assess Jam Effectiveness, Navy Case No. 99021, filed on February 29, 2008//U.S. Patent application Serial Number 12/040,452: Method for Using a Dynamic Mission Replanning Algorithm as an Aid to Assess Jam Effectiveness, Navy Case No. 99022, filed on February 29, 2008//U.S. Patent application Serial Number 12/417,301: Program to Generate an Aircrew Display Aid to Assess JAM Effectiveness, Navy Case No. 99810, filed on September 12, 2007.

ADDRESSES: Requests for copies of the inventions cited should be directed to Naval Air Warfare Center Weapons Division, Code 498400D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106 and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Michael D. Seltzer, Ph.D., Head, Technology Transfer Office, Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106, *telephone:* 760–939–1074, *FAX:* 760–939–1210, *E-mail: michael.seltzer@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR Part 404.7.

Dated: December 3, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–29465 Filed 12–9–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires

that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment.

Dated: December 7, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: Revision.

Title: Annual Mandatory Collection of Elementary and Secondary Education Data for EDFacts.

Frequency: Annually; Biennially.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,059.

Burden Hours: 1,113,034.

Abstract: EDFacts is in the implementation phase of a multiple year effort to consolidate the collection of education information about States, Districts, and Schools in a way that improves data quality and reduces paperwork burden for all of the national education partners. To minimize the burden on the data providers, EDEN seeks the transfer of the proposed data as soon as it has been processed for State, District, and School use. These data will then be stored in EDFacts and accessed by Federal education program managers and analysts as needed to make program management decisions. This process will eliminate redundant data collections while providing for the timeliness of data submission and use. The modification of this collection is to directly address the Civil Rights Data Collection from local education agencies (LEAs), which is part of the larger annual submission of elementary and secondary education data under EDFacts. The current expiration data and all of the currently approved data requirements of the State submitted data are not changing at this time.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4127. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ Building, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to AXT at 540–776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–29437 Filed 12–9–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 8, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 7, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: William D. Ford Direct Loan Program, Federal Direct PLUS Loan Request for Supplemental Information.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 101,750.

Burden Hours: 50,875.

Abstract: The Federal Direct PLUS Loan Request for Supplemental Information serves as the means by which a parent or graduate/professional student Direct PLUS Loan applicant may provide certain information to a school that will assist the school in originating the borrower's Direct PLUS Loan award, as an alternative to providing this information to the school by other means established by the school.

Requests for copies of the proposed information collection request may be

accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4183. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–29439 Filed 12–9–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–592–001]

Commission Information Collection Activities (FERC–592); Comment Request; Submitted for OMB Review

December 3, 2009.

AGENCY: Federal Energy Regulatory Commission

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 USC 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued two Notices related to FERC–592 that were published in the **Federal Register:** (a) ''Commission Information Collection Activities (FERC–592); Comment Request; Extension'' (74FR 50176, 9/30/2009), and (b) ''Request for Comment on and Emergency Short-Term Clearance Extension of OMB Approval for FERC–592'' (74FR58010, 11/10/2009). FERC received no comments from these notices and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by January 11, 2010.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0157 as a point of reference. The Desk Officer may be reached by telephone at 202–395–4638. A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC09–592–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide/electronic-media.asp*. To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and two copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC09–592–001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov*.

SUPPLEMENTARY INFORMATION: FERC–592 (''Standards of Conduct for Transmission Providers; and Marketing Affiliates of Interstate Pipelines,'' OMB No. 1902–0157) includes the reporting, recordkeeping, and posting requirements in:

- 18 CFR Part 358 (Standards of Conduct),
- 18 CFR 250.16, and
- FERC Form No. 592 log/format, that is posted at *http://www.ferc.gov/docs-filing/eforms.asp#592*.

Hereafter, this Notice will refer to this group of collections of information as ''FERC–592.''

Under section 4 of the Natural Gas Act (NGA), the Commission has the regulatory responsibility to ensure that pipeline rates and terms and conditions of service are just and reasonable and not unduly discriminatory. In order to ensure just and reasonable rates and services, the Commission must achieve two objectives: Prevent undue discrimination in natural gas markets, and promote competitive and efficient markets while mitigating market power. In short, the Commission's regulatory policy must seek to reconcile the objectives of fostering an efficient market that provides good alternatives to as many shippers as possible, while at the same time creating a regulatory framework that is fair and protects captive customers without good alternatives.

The ''FERC–592'' information (that is posted on the Web site, maintained, and/or provided by the respondents, as required) is used by the Commission to monitor the pipeline's transportation, sales, and storage activities for its marketing affiliate, and to deter undue discrimination by pipeline companies in favor of their affiliates. The information is also used by non-affiliated shippers, customers, and others (such as state commissions) to determine whether they have been harmed by affiliate preference and, in some cases, to prepare evidence for proceedings following the filing of a complaint or that address NGA section 4 rate cases.

Action: The Commission is requesting a three-year extension of the expiration date for the FERC–592, with no changes to the reporting requirements.

Burden Statement: Public reporting burden [1] for this collection is estimated as follows.

[1] The average number of hours an employee works per year is 2,080. The average employee costs $128,297 per year.

Information collection ''FERC–592'' (OMB No. 1902–0157)	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
18 CFR Part 358				
18 CFR 250.16				
FERC Form No. 592 log/format	85	1	116.62	9,913

[Note: These figures may not be exact, due to rounding.]

The total estimated annual cost burden [1] to respondents is $611,446.22 [(9,913 hours/2,080 hours per year) × $128,297/year]. The average annual cost per respondent is $7,193.48.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29412 Filed 12–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–870–001]

Ameren Energy Marketing Company; Notice of Filing

December 3, 2009.

Take notice that on November 24, 2009, Ameren Energy Marketing Company filed an amendment to the compliance filing submitted on June 2, 2009, pursuant to the Federal Energy Regulatory Commission's (Commission) Order issued May 11, 2009, *Ameren Energy Marketing Co.,* 127 FERC ¶ 61,131.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 15, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29406 Filed 12–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1142–003]

New York Independent System Operator, Inc.; Notice of Filing

December 3, 2009.

Take notice that on November 30, 2009, the New York Independent System Operator, Inc., pursuant to Rule 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.212 (2009), filed a motion to defer effective date of previously accepted tariff revisions that were conditionally accepted by the Commission's November 20, 2009 Order, *New York Independent System Operator, Inc.,* 129 FERC ¶ 61,164, until January 1, 2010 and request for waivers.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion

to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Dat*e: 5 p.m. Eastern Time on December 11, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29413 Filed 12–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–296–000]

Garden Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 3, 2009.

This is a supplemental notice in the above-referenced proceeding of Garden Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 23, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29408 Filed 12–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–293–000]

First Point Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 3, 2009.

This is a supplemental notice in the above-referenced proceeding of First Point Power, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is December 23, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29407 Filed 12–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–308–000]

Kleen Energy Systems, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 3, 2009.

This is a supplemental notice in the above-referenced proceeding of Kleen Energy Systems, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 23, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29410 Filed 12–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–310–000]

Algonquin Energy Services, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 3, 2009.

This is a supplemental notice in the above-referenced proceeding of Algonquin Energy Services, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 23, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29411 Filed 12–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–297–000]

Crystal Lake Wind III, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 3, 2009.

This is a supplemental notice in the above-referenced proceeding of Crystal Lake Wind III, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 23, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic

service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29409 Filed 12–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

December 3, 2009.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requestor
Prohibited		
1. CP09–431–000	11–12–09	Charles and Melanie Ogle.
Exempt		
1. CP09–6–000	11–19–09	Teresa De.
2. CP09–35–000	11–9–09	Donald and Marlene Winn.[1]
3. CP09–464–000	11–20–09	Van Button.[2]
4. ER07–636–000, EL01–88–000	11–19–09	Thomas Michels (Office of Senator Mary Landrieu).

[1] Among a group of comments (form letters) filed in Docket No. CP09–35–000—from Donald and Marlene Winn, Thea Shiota, Elizabeth Shock, Isaac Brock and Naheed Simjee—between 11–9–09 and 11–24–09.

[2] Record of conference call.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29405 Filed 12–9–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0548; FRL–9091–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Exhaust Emissions of Light-duty Vehicles in Metropolitan Detroit ; EPA ICR No. 2363.01, OMB Control No. 2060–NEW

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 8, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0548, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (734) 214–4939.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington DC 20503.
- *Hand Delivery:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0548. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Constance Hart, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, AAAQMC, 2000 Traverwood Drive, Ann Arbor, MI 48105; *telephone number:* (734) 214–4340; *fax number:* (734) 214–4939; *e-mail address: hart.connie@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2009–0548, which is available for online viewing at *http://www.regulations.gov,* or in person at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

''Docket ID No. EPA–HQ–OAR–2009–0548.''

Affected Entities: Entities potentially affected by this action are individual private owners of light-duty vehicles, including passenger cars and light trucks.

Title: Exhaust Emissions of Light-duty Vehicles in Metropolitan Detroit.

ICR Numbers: EPA ICR No. 2363.01, OMB Control No. 2060–NEW.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9. In addition, they are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: In response to recommendations from the National Research Council of the National Academy of Sciences, the EPA is initiating a systematic data collection designed to improve the methods and tools used by the Agency to estimate exhaust emissions as vehicles age. Data to be collected include vehicle type, vehicle characteristics, and measurement of exhaust emissions.

One of the main issues in the study of vehicle emissions is the difficulty in acquiring representative results. Major challenges include the diversity of technology, the highly variable nature of emissions, the complexity and expense of measurement, difficulty in acquiring and retaining engines or vehicles, and the array of external variables that influence emissions, ranging from temperature to driver behavior. In combination, these factors tend to limit the numbers of vehicles that can be included in a given study. Limited sample sizes in combination with high variability make emissions data challenging to interpret.

The collection is a test program, to be conducted by the Office of Transportation and Air Quality (OTAQ) in the Office of Air and Radiation (OAR). This study will be designed to develop and test novel screening, sampling and measurement procedures. These approaches promise to substantially reduce the cost of exhaust emissions measurement as well as to improve the accuracy of resulting estimates.

An innovative feature of this project will be the use of roadside remote-sensing measurements to construct a pool of vehicles from which vehicles can be sampled for purposes of recruitment and measurement using portable emissions measurement systems (PEMS). The acquisition of remote-sensing measurements for hydrocarbons, carbon-monoxide, and oxides of nitrogen will provide an index of emissions for all vehicles prior to sampling and recruitment for more intensive measurement. The index is expected to facilitate recruitment of vehicles with an emphasis on rare sub-populations such as high-emitting vehicles, and provide a means to appropriately relate measured vehicles to the overall fleet.

Research questions for the project include: (1) Can remote-sensing be used as a reliable index of emissions across the range of emissions? (2) Can PEMS measure accurate emissions time series for very clean vehicles, such as Tier 2 (Bins 2 and 3) or LEV–II (ULEV, SULEV)? (3) How can portable instruments be used to measure start emissions? and (4) Can the emissions index used for recruitment also serve as a means to estimate potential non-response bias?

We plan to collect remote-sensing measurements on approximately 30,000 vehicles, and from this pool, to recruit approximately 100 vehicles for measurement using PEMS. Participation in the program will be voluntary. The target population for the project will include light-duty cars and trucks certified to Tier 2 (Bins 5, 3 and 2) or equivalent LEV–II standards (LEV, ULEV or SULEV), respectively.

The information collection will involve 250 respondents, requiring 360 hours to complete at a total cost to those respondents of $9,500. For the Agency, the collection will require 3,200 hours to complete at a total cost of $250,000.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.45 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 250.

Frequency of response: On Occasion.

Estimated total average number of responses for each respondent: One.

Estimated total annual burden hours: 360.

Estimated total annual costs: $9,500. This includes an estimated burden cost of $9,500 and an estimated cost of $0 for capital investment or maintenance and operational costs.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 18, 2009.

Chester J. France,

Director, Assessment and Standards Division.

[FR Doc. E9–29440 Filed 12–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9090–8]

Proposed Administrative Cost Recovery Settlement Under Section 122(h) of the Comprehensive Environmental Response Compensation and Liability Act, as Amended, 42 U.S.C. 9622(h), Coffeyville Resources Refining & Marketing, LLC, Coffeyville, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive

Environmental Response Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement with Coffeyville Resources Refining & Marketing, LLC (CRRM), Coffeyville, Kansas, for recovery of past response costs concerning the response actions taken by CRRM relative to the manufacture of propane containing higher than normal concentrations of organic fluoride. The settlement requires CRRM to pay the Hazardous Substances Superfund for costs incurred by the United States Environmental Protection Agency, Region 7, in response to overseeing and investigating this response. The settlement requires CRRM to pay $54,625.06, to the Hazardous Substances Superfund. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the EPA Region 7 office located at 901 N. 5th Street, Kansas City, Kansas.

DATES: Comments must be submitted on or before January 11, 2010.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Region 7 office, 901 N. 5th Street, Kansas City, Kansas, Monday through Friday, between the hours of 8 a.m. through 4:30 p.m. A copy of the proposed settlement may be obtained from the Regional Hearing Clerk, 901 N. 5th Street, Kansas City, Kansas, (913) 551–7567. Requests should reference the Coffeyville Resources Refining & Marketing, LLC, EPA Docket No. CERCLA–07–2009–0011. Comments should be addressed to: Cheryle Micinski, Chief, Superfund Branch, Office of Regional Counsel, 901 N. 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Cheryle Micinski, at telephone: (913) 551–7274; fax number: (913) 551–7925/ Attn: Cheryle Micinski; E-mail address: *http://www.micinski.cheryle@epa.gov.*

Dated: November 19, 2009.

Robert W. Jackson,

Deputy Division Director Director, Superfund Division, Region 7.

[FR Doc. E9–29350 Filed 12–9–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted to the Office of Management and Budget for Review and Approval, Comments Requested

12/04/2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by January 11, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Cathy Williams, Federal Communications Commission (FCC), 445 12th Street, SW, Washington, DC 20554. To submit your comments by e-mail send then to: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection send an e-mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1054.

Title: Application for Renewal of an International Broadcast Station License.

Form No.: FCC Form 422–IB.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents/Responses: 10 respondents; 50 responses.

Estimated Time Per Response: 1–8 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained Section 325(c) of the Communications Act of 1934, as amended..

Total Annual Burden: 160 hours.

Annual Cost Burden: $36,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This collection is being submitted to the Office of Management and Budget (OMB) as a revision to include the information collection requirements related to rule sections 47 CFR 73.702, 73.759(g), 73.761(b) and 73.782 into this collection in order to obtain the full three year OMB clearance for 3060–1054.

The Federal Communications Commission (''Commission'') plans to implement and release to the public an ''Application for Renewal of an International Broadcast Station License (FCC Form 422–IB).'' The form has not been implemented yet due to a lack of

budget resources and technical staff. After the FCC Form 422–IB has been implemented and the Commission receives final approval from OMB, applicants will complete the FCC Form 422–IB in lieu of the ''Application for Renewal of an International or Experimental Broadcast Station License,'' (FCC Form 311). In the interim, applicants will continue to file the FCC Form 311 with the Commission. (Note: The OMB approved the FCC Form 311 under OMB Control No. 3060–1035).

The Commission stated previously that the FCC Form 422–IB will be available to applicants in the International Bureau Filing System (''MyIBFS'') after it is implemented. However, the Commission plans to develop a new Consolidated Licensing System (CLS) within the next five years that will replace MyIBFS. Therefore, the FCC Form 422–IB will be made available to the public in CLS instead of MyIBFS.

The information collected pursuant to the rules set forth in 47 CFR part 73, Subpart F, is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. E9–29403 Filed 12–9–09 8:45 am]

BILLING CODE 6712–01–S

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

December 7, 2009.

TIME AND DATE: 10 a.m., Thursday, December 17, 2009.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor* v. *Cumberland Coal Resources, LP,* Docket Nos. PENN 2008–51–R, *et seq.* (Issues include whether an order issued to the operator under 30 CFR 75.363(a) (requiring that hazardous conditions be corrected or posted) should be amended to allege a violation of 30 CFR 75.360(b) (requiring that the person conducting a preshift examination identify hazardous conditions).

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. E9–29606 Filed 12–8–09; 4:15 pm]

BILLING CODE 6735–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0096]

Federal Acquisition Regulation; Information Collection; Patents

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Patents. This OMB clearance currently expires on May 31, 2010.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before February 8, 2010.

ADDRESSES: Submit comments including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, GSA (202) 501–3775 or e-mail *ernest.woodson@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

The patent coverage in FAR subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection with performing a Government contract (FAR 27.201–1 and 52.227–2). The contractor is also required to report all royalties anticipated or paid in excess of $250 for the use of patented inventions by furnishing the name and address of licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and number of units (FAR 27.202–1, 52.227–6, and 52.227–9). The information collected is to protect the rights of the patent holder and the interest of the Government.

B. Annual Reporting Burden

Number of Respondents: 30.

Responses per Respondent: 1.

Total Responses: 30.

Average Burden Hours per Response: .5.

Total Burden Hours: 15.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0096, Patents, in all correspondence.

Dated: December 3, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–29401 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision to Evaluate a Petition to Designate a Class of Employees of Area IV of the Santa Susana Field Laboratory, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees of Area IV of the Santa Susana Field Laboratory to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Santa Susana Field Laboratory.

Location: Area IV.

Job Titles and/or Job Duties: All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked in any area.

Period of Employment: January 1, 1959 to December 31, 1964.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–29381 Filed 12–9–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–09AD]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of the Field Triage Decision Scheme: The National Trauma Triage Protocol—New—Division of Injury Response (DIR), National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The ''Field Triage Decision Scheme: The National Trauma Triage Protocol'' educational initiative was developed to help emergency medical services (EMS) professionals (administrators, medical directors, trauma system leadership, and providers) learn about and implement the revised Field Triage Decision Scheme. The Decision Scheme is intended to be the foundation for the development of local and regional field triage protocols.

In the United States, injury is the leading cause of death for persons aged 1–44 years. EMS professionals have a substantial impact on care of the injured and on public health. At an injury scene, EMS professionals determine the severity of injury, initiate medical management, and identify the most appropriate facility to which the patient should be transported. This destination decision is made through a process called field triage. Certain hospitals have additional expertise, resources, and equipment to treat severely injured patients. These facilities are known as trauma centers and are classified from Level I to Level IV. The risk for death of a severely injured person is 25% lower if the patient receives care at a Level I trauma center. However, not all patients require the services of a Level I trauma center; proper triage will ensure that patients who are injured less severely will be transported to a closer emergency department that is capable of managing their injuries.

In an effort to encourage use of improved triage procedures, CDC's National Center for Injury Prevention and Control (NCIPC) worked with experts and partner organizations to develop the 2006 Field Triage Decision Scheme. In support of the 2006 Field Triage Decision Scheme, NCIPC developed a multi-media toolkit aimed at EMS professionals. The toolkit includes *A Guide to the Field Triage Decision Scheme: The National Trauma Triage Protocol,* a poster, CD–ROM, and pocket card to help EMS providers, planners, and administrators effectively train others and use the Decision Scheme criteria within their own systems.

After the national distribution, NCIPC will conduct an online survey of EMS professionals who have received a toolkit to assess the short-term impact of the communication initiative directed at EMS professionals about field triage procedures. Specifically, the survey will assess how many EMS professionals who received a copy of the Decision Scheme are using it, how EMS professionals have used the Decision Scheme and accompanying toolkit materials, how the materials have been used to educate others, what EMS professionals learned from the materials, and how the Decision Scheme changed EMS professional's triage practices. Survey results will be used to identify the impact and applicability of the Decision Scheme and toolkit materials for EMS professionals.

NCIPC will also conduct focus groups with a segment of the survey respondents in order to have them elaborate on data submitted through the survey. These group interviews will focus on the extent the Decision Scheme is being used, how it is being implemented, self-reported changes in knowledge, and perceived impact on treatment of trauma patients. There are no costs to respondents other than their time. The data collection will occur over two years. The total estimated annual burden hours are 412.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
EMS Professionals	Online survey	1,500	1	15/60
	Screening/Recruitment for Focus Groups	64	1	5/60
	Focus Groups	32	1	1

Dated: December 4, 2009.

Maryam Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–29435 Filed 12–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0008]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Emergency Epidemic Investigations (0920–0008)—Extension—Office of Workforce and Career Development (OWCD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

One of the objectives of CDC's epidemic services is to provide for the prevention and control of epidemics, and protect the population from public health crises such as human-made or natural biological disasters and chemical emergencies. CDC meets this objective, in part, by training investigators, maintaining laboratory capabilities for identifying potential problems, collecting and analyzing data, and recommending appropriate actions to protect the public's health. When state, local, or foreign health authorities request help in controlling an epidemic or solving other health problems, CDC dispatches skilled epidemiologists from the Epidemic Intelligence Service (EIS) to investigate and resolve the problem. Resolving public health problems rapidly ensures cost-effective health care and enhances health promotion and disease prevention.

The purpose of the Emergency Epidemic Investigations data collection project is to collect data on the conditions surrounding and preceding the onset of a problem. The data must be collected in a timely fashion so that information can be used to develop prevention and control techniques, to interrupt disease transmission and to help identify the cause of an outbreak. Since the events necessitating the collections of information are of an emergency nature, most data collection is done by direct interview or written questionnaire and are one-time efforts related to a specific outbreak or circumstance. If during the emergency investigation, the need for further study is recognized, a project is designed and separate OMB clearance is required. Interviews are conducted to be as unobtrusive as possible and only the minimal information necessary is collected. The Emergency Epidemic Investigations data collection project is the principal source of data on outbreaks of infectious and noninfectious diseases, injuries, nutrition, environmental health, and occupational problems.

Each investigation contributes to the general knowledge about a particular type of problem or emergency, so that data collections are designed taking into account knowledge gained during similar situations in the past. Some questionnaires have been standardized, such as investigations of outbreaks aboard aircraft or cruise vessels.

The Emergency Epidemic Investigations data collection project provides a range of data on the characteristics of outbreaks and those affected by outbreaks. Data collected include demographic characteristics of the affected population, exposure to the causative agent(s), transmission patterns, and severity of the outbreak. These data, together with trend data, may be used to monitor the effects of change in the health care system, plan health services, improve the availability of medical services, and assess the health status of the population.

Users of the Emergency Epidemic Investigations data include, but are not limited to, Epidemic Intelligence Service (EIS) officers of the CDC, who investigate the patterns of disease or injury, the level of risky behaviors, causative agents, the transmission of the condition, and the impact of interventions. EIS is a two-year program of training and service in applied epidemiology through CDC, primarily for persons holding doctoral degrees.

There is no cost to the respondents other than their time for participation. Predicting the number of epidemic investigations that might occur in any given year is difficult. The previous three years' experience shows an annualized burden of 3,750 hours and respondent total of 15,000. Therefore, for this clearance, the annualized burden hours are estimated to be 3,750.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General public	Emergency Epidemic Investigations	15,000	1	15/60
State and local officials	Emergency Epidemic Investigations	100	1	15/60

Dated: December 3, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–29445 Filed 12–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1998–D–0025] (formerly Docket No. 1998D–0266)

Guidance on Current Good Manufacturing Practice for Positron Emission Tomography Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''PET Drugs—Current Good Manufacturing Practice (CGMP).'' Elsewhere in this issue of the **Federal Register**, we are issuing final regulations on CGMPs for positron emission tomography (PET) drugs. We are issuing the guidance to help PET drug producers better understand FDA's thinking concerning compliance with the PET CGMP regulations.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Brenda Uratani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 1–240–328–7621, e-mail: *Brenda.Uratani@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, the President signed the Food and Drug Administration Modernization Act of 1997 (Modernization Act) (Public Law 105–115) into law. Section 121(c)(1)(A) of the Modernization Act directs us to establish appropriate approval procedures and CGMP requirements for PET drugs. Section 121(c)(1)(B) states that, in adopting such requirements, we must take due account of any relevant differences between not-for-profit institutions that compound PET drugs for their patients and commercial manufacturers of the drugs. Section 121(c)(1)(B) also directs us to consult with patient advocacy groups, professional associations, manufacturers, and physicians and scientists who make or use PET drugs as we develop PET drug CGMP requirements and approval procedures.

In accordance with section 121 of the Modernization Act, we have taken the following actions in developing the regulations on CGMP for PET drugs:

- *Regulations*. We made available preliminary draft regulations (64 FR 51274, September 22, 1999), and a preliminary draft proposed rule (67 FR 15344, April 1, 2002), and published a proposed rule on PET drug CGMP (70 FR 55038, September 20, 2005).
- *Public Meetings*. We held public meetings on February 19, 1999, September 28, 1999, and May 21, 2002, to discuss our tentative approach, preliminary draft regulations, and preliminary draft proposed rule. We responded to numerous questions and comments and made changes in our preliminary draft regulations and proposed rule in response to written and oral comments.
- *Guidance*. When we published the preliminary draft proposed rule, we published a draft guidance on CGMP for PET drugs (67 FR 15404, April 1, 2002). With the proposed rule, we published a revised draft guidance (70 FR 55145, September 20, 2005).

Elsewhere in this issue of the **Federal Register**, we are publishing a final rule on CGMP for PET drugs. We are making this guidance available so that PET drug producers can better understand our thinking on compliance with the PET CGMP regulations, including appropriate resources, procedures, and documentation for PET drug production facilities.

II. The Guidance

The guidance entitled ''PET Drugs—Current Good Manufacturing Practice (CGMP)'' provides recommended approaches for complying with the regulations on CGMP for PET drugs. In preparing the guidance, we considered all comments received on the revised draft guidance of the same name. The guidance includes revisions to coincide with the final rule on PET CGMP and clarifications in response to comments on the revised draft guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on compliance with CGMP for PET drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Paperwork Reduction Act of 1995

The information collection resulting from this guidance is covered by the information collection provisions of the final rule entitled ''Current Good Manufacturing Practice for Positron Emission Tomography Drugs'' which is published elsewhere in this issue of the **Federal Register**. The information collection provisions of the final rule have been submitted to the Office of Management and Budget (OMB) for review, as required under section 3507(d) of the Paperwork Reduction Act. Prior to the effective date of the final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in the final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

V. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/*

Guidances/default.htm or *http://www.regulations.gov*.

Dated: December 3, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–29286 Filed 12–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Vascular Pathobiology.

Date: January 5, 2010.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Manjit Hanspal, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, 301–435–1195, *hanspalm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Regulating Energy Homeostasis and Metabolism.

Date: January 13–14, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David Weinberg, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301–435–1044, *David.Weinberg@nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Immunopathology and Immunotherapy Study Section.

Date: January 21–22, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Denise R. Shaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group; Molecular Oncogenesis Study Section.

Date: January 25–26, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001.

Contact Person: Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group; Cancer Molecular Pathobiology Study Section.

Date: January 25–26, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Roadmap HTS Assay Development.

Date: January 28–29, 2010.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: James J. Li, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.

Date: January 28–29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 501 Geary Street, San Francisco, CA 94102.

Contact Person: Martha Faraday, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Developmental Therapeutics Study Section.

Date: January 28–29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Hotel, 400 West Broadway, San Diego, CA 92101.

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 408–9512, *gubanics@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Cell Death in Neurodegeneration Study Section.

Date: January 28–29, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Boris P. Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29486 Filed 12–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Biology.

Date: December 16, 2009.

Time: 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Daniel F. McDonald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892. (301) 435–1215. *mcdonald@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Urology Business Applications.

Date: December 21, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892. 301–435–1501. *morrisr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29473 Filed 12–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Muscle and Skeletal Biology.

Date: January 8, 2010.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yi-Hsin Liu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–451–1327, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RM09–009 and RM009–008: Development of New Technologies Needed for Studying Human Microbiome.

Date: January 25, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, (301) 435–1149, *elzaataf@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29487 Filed 12–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0561]

Electronic Margin of Safety and NonClinical Toxicology Study Data Submission; Notice of Pilot Project

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Veterinary Medicine (CVM) is seeking sponsors interested in participating in a pilot project to test the electronic submission of margin of safety and nonclinical toxicology study data using the Standard for Exchange of Nonclinical Data (SEND), a new electronic data standard format which is used to support review activity. FDA anticipates that a successful pilot will enable CVM to accept margin of safety and nonclinical toxicology study data related to investigational new animal drug (INAD) files and new animal drug applications (NADA's) electronically in SEND format.

DATES: Submit electronic or written requests to participate in the pilot project by March 10, 2010. General comments on the pilot project are welcome at any time.

ADDRESSES: Submit electronic requests to participate in the pilot and comments regarding the project to *http://www.regulations.gov.* Submit written requests and comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Janis Messenheimer, Food and Drug Administration, Center for Veterinary Medicine, Office of New Animal Drug Evaluation (HFV–135), 7500 Standish Pl., Rockville, MD 20855, 240–276–8348, e-mail: *Janis.messenheimer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing an opportunity to participate in a 3-year CVM pilot project. This pilot involves FDA's ongoing testing of SEND, a data model initially developed for non-clinical data from animal toxicology studies submitted in support of applications for approval of human drugs. This pilot is designed to test the ability of SEND to support the review of margin of safety and nonclinical toxicology study data submitted to INAD files and as part of NADA's at CVM. CVM considers this pilot to be the beginning of a phased implementation of SEND that will enable CVM to receive and evaluate data from toxicology studies as part of the human food safety evaluation and margin of safety studies.

SEND was developed by the Clinical Data Interchange Standards Consortium's (CDISC's) SEND Team. CDISC is an open, multidisciplinary, nonprofit organization that has established worldwide industry standards to support the electronic acquisition and submission of clinical trial data and metadata for medical and biopharmaceutical product development (*http://www.cdisc.org*[1]). CDISC is currently facilitating and testing the extension of the same SEND standard for nonclinical toxicology data. Where possible, the standards developed for clinical datasets and metadata, as described in the overall Study Data Tabulation Model (SDTM), are being used to develop a standardized dataset format for nonclinical studies.

Recently, the Center for Drug Evaluation and Research (CDER) completed a pilot project (phase 1) using the SEND format in sample toxicology datasets, that is, outside of a regulatory setting (68 FR 3885, January 27, 2003). The phase 1 CDER pilot also evaluated data validation and analysis tools specifically designed to validate datasets according to the current SEND standard and to enable a reviewer to display and evaluate data efficiently from animal toxicity studies submitted in the SEND format. The phase 1 pilot resulted in the development of a SEND Implementation Guide (SENDIG) describing the process for formatting data from single- and repeat-dose animal toxicity and carcinogenicity studies for submission purposes. Following the phase 1 pilot, CDER announced a second pilot (phase 2) to test SEND formatted datasets in a regulatory setting (72 FR 56363, October 3, 2007). To support the new CDER pilot, the SENDIG has been updated to ensure the harmonized implementation of the CDISC SDTM and SEND models. The updated guide can be found at *http://www.cdisc.org*.

CVM currently receives margin of safety and nonclinical toxicology study data in paper, portable document format (PDF), and other electronic formats. The lack of uniformity in the formats used by sponsors to submit data, in addition to the inconsistent use of terminology across submissions, complicates the agency's efforts to validate, display, and evaluate the data using modern, computer-based review and analysis tools. As part of FDA's effort to modernize its information technology systems and improve efficiency, CVM is planning to transition to a true electronic data format for submission of study data for regulatory review.

[1] FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site address after this document publishes in the **Federal Register**.

II. Pilot Project Description

This pilot is intended to help CVM evaluate the adequacy of the current SEND format (SAS transport files, XPT version 5) in accommodating margin of safety and nonclinical toxicology study data submitted to the Center. As part of this evaluation and in anticipation of FDA receiving datasets for regulatory review, the CDISC SEND Team, in collaboration with FDA and available pilot participants, will first update the SENDIG as needed to include veterinary-specific data elements and terms.

As experience from the ongoing pilot is gained with various types of margin of safety and nonclinical toxicology study data, CVM expects to recommend new technical specifications for margin of safety and toxicology studies as part of a continuing process of transitioning from paper-based submissions to the submission of study data by electronic means.

III. Participation

CVM is seeking a limited number of sponsors (approximately five to eight, but no more than eight) to participate in this pilot. Because a limited group of voluntary participants is needed, CVM will use its discretion in choosing volunteers, based on their experience with datasets previously submitted to CVM. The duration of the pilot is expected to be approximately 3 years, but it may be extended as needed. A familiarity with SEND (e.g., from involvement in the CDER pilot) would benefit participants but is not necessary for participation in the project. A participant should be willing to provide the same study data in both paper format and SEND electronic format using SAS transport files (XPT version 5). The pilot provides the best opportunity to compare and evaluate the same data available in paper and SEND formats in order to test the accuracy and reliability of the SEND format.

For the purposes of this pilot, study reports from margin of safety and nonclinical toxicology study data will be requested for submission. We anticipate that a successful pilot, including the implementation of any needed changes to the SENDIG and/or the data validation, viewing, and analysis tools, will allow CVM to accept specific types of margin of safety and nonclinical toxicology study data electronically based on the SEND format.

Requests to participate in the pilot project should be submitted to the Division of Dockets Management (see **ADDRESSES**). Requests are to be identified with the docket number found in brackets in the heading of this document.

Under current FDA regulations, applicants must provide evidence to establish safety and effectiveness as part of their NADA (21 CFR 514.1(b)(8)). Participation in this pilot program will not exempt participants from compliance with applicable requirements for the submission of evidence to establish safety and effectiveness.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this pilot project. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 4, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–29419 Filed 12–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–0105; Community Preparedness and Participation Survey

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0105; 088–0–2, Household Preparedness Telephone Survey.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the

general public and other Federal agencies to take this opportunity to comment on a proposed extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the Community Preparedness and Participation Survey, a telephone survey that collects preparedness information from the general population.

DATES: Comments must be submitted on or before February 8, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, WASH, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Jenelle Gabriele, Program Specialist, Community Preparedness Division at 202–786–9463 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: This survey will allow the Federal Emergency Management Agency (FEMA) to collect information that reports the state of citizen preparedness in the United States. FEMA's Community Preparedness Division administers Citizen Corps, an initiative launched by President George W. Bush in Executive Order 13254 in January 2002. Citizen Corps' mission is to bring together government and community leaders to involve citizens in all-hazards emergency preparedness and resilience. To evaluate the Nation's progress on personal preparedness, FEMA's Community Preparedness Division conducts National surveys to measure the public's knowledge, attitudes, and behaviors relative to preparing for a range of hazards. This information collection enables Citizen Corps Councils and other community based organizations to improve upon their strategies to enhance preparedness programs and disaster response.

Collection of Information

Title: Community Preparedness and Participation Survey.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: OMB No. 1660–0105.

Form Titles and Numbers: FEMA Form 088–0–2, Household Preparedness Telephone Survey.

Abstract: FEMA's Community Preparedness Division would like to renew a currently approved collection to evaluate the state of preparedness nationally. The Community Preparedness Division analyzes the data collected through this telephone survey of the public to identify progress and gaps in citizen and community preparedness and participation. This information is used by the Community Preparedness Division, and Citizen Corps Councils to tailor awareness and recruitment campaigns, messaging and public information efforts, and strategic planning initiatives to more effectively improve the state of citizen preparedness and participation across the country.

Affected Public: Individuals or households.

Estimated Total Annual Burden Hours: 3,247 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total Number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
Individuals or households.	Household Preparedness Telephone Survey/ FEMA Form 088–0–2.	9,750	1	9,750	20 minutes (.333 hours).	3,247	$21.80	$70,784.60
Total	.....	9,750	.....	.....	.....	3,247	.....	70,784.60

Estimated Cost: None.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: December 4, 2009.

Samuel C. Smith,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–29448 Filed 12–9–09; 8:45 am]

BILLING CODE 9111–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Andean Trade Preferences

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; Revision of an existing information collection: 1651–0091.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Andean Trade Preferences. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 8, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC. 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC. 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Andean Trade Preferences.

OMB Number: 1651–0091.

Form Number: 449.

Abstract: The information is to be used by CBP officers to document preferential tariff treatment under the provisions of the Andean Trade Preferences Act and the Andean Trade Promotion and Drug Eradication Act (ATPDEA), as codified in 19 U.S.C. 3201 through 3206. CBP is adding form 449 to this collection of information so respondents can submit information under ATPDEA.

Current Actions: This submission is being made to extend the expiration date and to revise this information collection by adding Form 449.

Type of Review: Extension (with change).

Affected Public: Businesses.

ATPA Certificate of Origin:

Estimated Number of Respondents: 2,133.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 4,266.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 711.

ATPDEA Certificate of Origin:

Estimated Number of Respondents: 233.

Estimated Number of Annual Responses per Respondent: 7.

Estimated Number of Total Annual Responses: 1,631.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 815.

Dated: December 7, 2009.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. E9–29458 Filed 12–9–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0576]

Port Access Route Study: Off San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of study; request for comments.

SUMMARY: The Coast Guard is conducting a Port Access Route Study (PARS) to evaluate the continued applicability of and the need for modifications to current vessel routing measures in the approaches to San Francisco. The goal of the study is to help reduce the risk of marine casualties and increase the efficiency of vessel traffic in the study area. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

DATES: Comments and related material must reach the Docket Management Facility on or before February 8, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0576 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study, contact Lieutenant Sara Young, Project Officer, Eleventh Coast Guard District, telephone 510–437–2978; or e-mail *Sara.E.Young@uscg.mil*; or George Detweiler, Office of Waterways Management, Coast Guard, telephone 202–372–1566, or e-mail *George.H.Detweiler@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Ms. Renee K. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this study by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit comments, please include the docket number for this rulemaking (USCG–2009–0576), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Notices'' and insert ''USCG–2009–0576'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the Comments and Documents

To view the comments and documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0576'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Definitions

The following definitions are from the International Maritime Organization's (IMO's) publication ''Ships' Routeing'' (except ''Regulated Navigation Area'') and should help you review this notice:

Area to be avoided (*ATBA*) means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all vessels, or certain classes of vessels.

Deep-water route means a route within defined limits, which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on nautical charts.

Inshore traffic zone means a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).

Precautionary area means a routing measure comprising an area within defined limits where vessels must navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of vessels in transit, which is often marked by centerline buoys.

Recommended track is a route which has been specially examined to ensure so far as possible that it is free of dangers and along which vessels are advised to navigate.

Regulated Navigation Area (RNA) means a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

Roundabout means a routing measure comprising a separation point or circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

Separation Zone or separation line means a zone or line separating the traffic lanes in which vessels are proceeding in opposite or nearly opposite directions; or separating a traffic lane from the adjacent sea area; or separating traffic lanes designated for particular classes of vessels proceeding in the same direction.

Traffic lane means an area within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones may constitute a boundary.

Traffic Separation Scheme (TSS) means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Two-way route means a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

Vessel routing system means any system of one or more routes or routing measure aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, no anchoring areas, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

Requirement for port access route studies: Under the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223(c)), the Commandant of the Coast Guard may designate necessary fairways and traffic separation schemes (TSSs) to provide safe access routes for vessels proceeding to and from United States ports. The designation of fairways and TSSs recognizes the paramount right of navigation over all other uses in the designated areas.

The PWSA requires the Coast Guard to conduct a study of potential traffic density and the need for safe access routes for vessels before establishing or adjusting fairways or TSSs. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses.

Previous port access route studies: In 1979, the Coast Guard initiated a port access route study of the California coast. The study recommended an amendment to the existing TSSs off San Francisco which consisted of rotating the southern approach lane westward (seaward) to provide a true north-south alignment. This shift would encourage vessels in the area to transit farther offshore when entering or departing San Francisco Bay from or to the south. The International Maritime Organization

(IMO) adopted this recommendation in 1990.

The United States elected to postpone implementation of the amendment until the Monterey Bay National Marine Sanctuary was designated and a study of potential impacts was conducted. The Monterey Bay National Marine Sanctuary Vessel Management Final Report was published October 22, 1998. Similar to the 1979 PARS and the IMO adopted amendments, the report recommended shifting the ''southern approach'' of the San Francisco TSS slightly west to reduce risk of groundings along the San Mateo coastline and to improve north-south alignment.

Necessity for a new port access route study: The Coast Guard is always seeking ways to enhance the safety of life at sea. The Coast Guard has identified a potential safety enhancement by increasing predictability of vessel traffic patterns in a popular offshore fishing area near the northern approach of the traffic separation scheme off San Francisco. When vessels follow predictable and charted routing measures, congestion may be reduced, and mariners may be better able to predict where vessel interactions may occur and act accordingly.

The Coast Guard plans to study whether extending the traffic lanes of the Traffic Separation Schemes off San Francisco would increase safety in the area just outside the radar range of Vessel Traffic Service (VTS) San Francisco. Because the VTS does not monitor this region, extending the traffic lanes may increase the predictability of vessel movements and encounters and improve navigation safety. In addition, the study will also assess whether extending the traffic lanes may interfere with fishing vessels operating in the area.

Furthermore, the present traffic lanes go through the Gulf of the Farallones National Marine Sanctuary and, if extended, will go into the Cordell Bank National Marine Sanctuary. The increased predictability of vessel traffic using established traffic lanes may decrease the potential for oil spills, collisions and other events that could threaten the marine environment.

Timeline, study area, and process of this PARS: The Eleventh Coast Guard District will conduct this PARS. The study will begin immediately and should take 6 to 12 months to complete.

The study area will encompass the traffic separation schemes off San Francisco extending to the limit of the VTS area and vessel traffic patterns of vessels departing from or approaching the traffic lanes. The VTS area covers the seaward approaches within a 38 nautical mile radius of Mount Tamalpais (37°55.8′ N., 122°34.6′ W).

As part of this study, we will consider previous studies, analyses of vessel traffic density, fishing vessel information, and agency and stakeholder experience in vessel traffic management, navigation, ship handling, and effects of weather. We encourage you to participate in the study process by submitting comments in response to this notice.

We will publish the results of the PARS in the **Federal Register.** It is possible that the study may validate existing vessel routing measures and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and the efficiency of vessel traffic. The recommendations may lead to future rulemakings or appropriate international agreements.

Possible Scope of the Recommendations

We are attempting to determine the scope of any safety problems associated with vessel transits in the study area. We expect that information gathered during the study will help us identify any problems and appropriate solutions. The study may recommend that we—

- Maintain the current vessel routing measures;
- Modify the existing traffic separation scheme;
- Create one or more precautionary areas;
- Create one or more inshore traffic zones;
- Establish area(s) to be avoided;
- Create deep-draft routes;
- Establish a Regulated Navigation Area (RNA) with specific vessel operating requirements to ensure safe navigation near shallow water; and
- Identify any other appropriate ships' routing measures.

Questions

To help us conduct the port access route study, we request information that will help answer the following questions, although comments on other issues addressed in this notice are also welcome. In responding to a question, please explain your reasons for each answer and follow the instructions under ''Public Participation and Request for Comments'' above.

1. What navigational hazards do vessels operating in the study area face? Please describe.

2. Are there strains on the current vessel routing system, such as increasing traffic density? Please describe.

3. Are modifications to existing vessel routing measures needed to address hazards and strains and to improve traffic efficiency in the study area? If so, please describe.

4. What costs and benefits are associated with the measures listed as potential study recommendations? What measures do you think are most cost-effective?

5. What impacts, both positive and negative, would changes to existing routing measures or new routing measures have on the study area?

This notice is issued under authority of 33 U.S.C. 1223(c) and 5 U.S.C. 552.

Dated: October 13, 2009.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. E9–29415 Filed 12–9–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2009–N231] [10120–1113–0000–F5]

Endangered Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on applications for permits to conduct enhancement of survival activities with endangered species. The Endangered Species Act of 1973, as amended (Act) requires that we solicit public comment on these permit applications involving endangered species.

DATES: To ensure consideration, please send your written comments by January 11, 2010.

ADDRESSES: Program Manager, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicants have applied for recovery permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We are soliciting

review of and comment on these applications by local, State, and Federal agencies and the public.

Permit No. TE–225693

Applicant: Amy B.H. Greenwell Ethnobotanical Garden, Captain Cook, Hawaii.

The applicant requests a permit to remove and reduce to possession *Prithchardia affinis* (loulu) in conjunction with seed collection and phenology studies on National Park Service land on the island of Hawaii in the State of Hawaii, for the purpose of enhancing its survival.

Permit No. TE–003483

Applicant: U.S. Geological Survey, Biological Resources Division, Pacific Island Ecosystems Research Center, Honolulu, Hawaii.

The permittee requests a permit amendment to remove and reduce to possession (collect) *Cyanea glabra* (haha) and *Pritchardia affinis* (loulu) in conjunction with assessing genetic diversity and population structure on the islands of Hawaii and Maui in the State of Hawaii for the purpose of enhancing their survival.

Public Comments

Please refer to the permit number for the applications when submitting comments.

We are soliciting public review and comment on these recovery permit applications. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: November 16, 2009.

David J. Wesley,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E9–29433 Filed 12–9–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2009–N188; 10120–1113–0000–D2]

Notice of Intent to Prepare an Environmental Impact Statement Related to Experimental Removal of Barred Owls for the Conservation Benefit of Threatened Northern Spotted Owls

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Under the National Environmental Policy Act of 1969 (NEPA), this notice advises the public that we, the U.S. Fish and Wildlife Service (USFWS), intend to gather information necessary to prepare an environmental impact statement (EIS) for barred owl (*Strix varia*) removal experiments designed to determine if the species' presence is affecting northern spotted owl (*Strix occidentalis caurina*) population stability and growth, and to test the feasibility of removing barred owls from specific locations. We furnish this notice to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to include in the EIS.

DATES: To ensure consideration, please send your written comments by January 11, 2010. Interested parties may contact us for more information at the addresses and phone numbers listed in **ADDRESSES**.

ADDRESSES: You may submit information by one of the following methods:

1. You may mail written comments and information to Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Ave., Ste. 100, Portland, OR 97266.

2. You may hand-deliver written comments to the above address.

3. You may send comments by electronic mail (e-mail) to *BarredOwlEIS@fws.gov.* Please see the ''Request for Information'' section below for file format and other information about electronic filing.

4. You may fax your comments to 503–231–6195.

FOR FURTHER INFORMATION CONTACT: Robin Bown, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Ave., Ste. 100, Portland, OR 97266; telephone, 503–231–6179; facsimile, 503–231–6195.

SUPPLEMENTARY INFORMATION:

Background

We listed the northern spotted owl as threatened in June 1990 under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), based primarily on the loss and degradation of suitable habitat by human activity and natural events (55 FR 26114). Conservation efforts for the northern spotted owl since the species' listing have focused mainly on securing forest habitat with characteristics essential for its survival and conservation. The 1989 Status Review Supplement for the northern spotted owl indicated that the long-term impact of the expansion of the barred owl into the range of the spotted owl was unknown, but of concern (USFWS 1989, p. 3.15). This assessment was mirrored in the listing rule for the northern spotted owl, which noted that the long-term impact of barred owls on the spotted owl was unknown but of considerable concern (55 FR 26114, p. 26190). However, the best available information now suggests that competition from barred owls poses a significant threat to the northern spotted owl, because barred owls have continued to expand and saturate their range throughout the listed range of the northern spotted owl. Therefore, securing habitat alone may not result in the recovery of the northern spotted owl.

In the past century barred owls have expanded their range westward, reaching the range of the northern spotted owl in British Columbia by about 1959. Barred owl populations have continued to expand southward within the range of the northern spotted owl, and were first documented in that portion of Washington in 1973, Oregon in 1972, and California in 1976 (Livezey *et al.* 2007, p. 49; Sharp 1989, p. 179). The population of barred owls behind the expansion front continues to increase, and they now outnumber spotted owls in many of the northern portions of the northern spotted owl's range (Pearson and Livezey 2003, p. 272).

Competition and predation from barred owls may cause direct and indirect negative effects to the northern spotted owl. This threat could result in extirpation of the northern spotted owl from a substantial portion of its historical range and severely reduce the likelihood of its recovery, even if other known negative effects are eliminated.

Potential direct negative effects include declines in site occupancy by northern spotted owls resulting from their exclusion from high-quality habitat by barred owls. This exclusion drives

northern spotted owls from forests that contain characteristics necessary for breeding, feeding, and sheltering, reducing the potential for northern spotted owl survival and reproduction and contributing to a declining population. In addition, barred owls may physically attack spotted owls during interactions between individuals (Gutierrez *et al.* 2007, p. 187). These effects may help explain declines in northern spotted owl territory occupancy associated with barred owls in Oregon, where they are recent invaders, and reduced northern spotted owl survivorship and sharper population declines in Washington, where barred owls have been present the longest and in the greatest densities (Anthony *et al.* 2006, pp. 21, 30, 32).

Indirect effects may also occur if the presence of barred owls suppresses the response of northern spotted owls to surveys conducted prior to forest management activities. In some situations, the presence of northern spotted owls detected during pre-project surveys results in changes to management activities, thus protecting habitat and northern spotted owls. Current research shows a suppression effect in northern spotted owl responses to surveys when barred owls are present, which could cause many northern spotted owls to go undetected (Crozier *et al.* 2006, p. 767). Thus, occupied habitat could end up being modified or destroyed, thereby reducing site occupancy, survival, and reproduction of northern spotted owls.

We are proposing to conduct experiments to determine if the removal of barred owls would increase the site occupancy, survival, reproduction, and population trends of northern spotted owls. Support for these experiments has been expressed in the scientific community, as indicated in the following examples. Gutierrez *et al.* (2007, p. 181) stated ''only through carefully designed experiments involving removal of barred owls will we be able to determine if recent declines in spotted owl populations are caused by barred owls or by other factors.'' Gutierrez *et al.* (2007, p. 191) goes on to state ''[c]orrectly executed removal experiments should provide an unambiguous result regarding the effect of barred owls on spotted owl population declines.'' The Wildlife Society sent a letter to the Director of the USFWS stating ''experiments to remove and control barred owls * * * [are] appropriate'' (The Wildlife Society 2008, p. 11). Buchanan *et al.* (2007, p. 683) state ''[d]espite the potential for confounding effects, appropriately designed removal experiments should provide the strongest inference regarding the magnitude of the Barred Owl's effect on Spotted Owls.''

The methods for, and effects of, removing barred owls from northern spotted owl habitat are not fully understood. Two publications provide discussion and analysis of various methods of barred owl control: ''A synopsis of suggested approaches to address potential competitive interaction between Barred Owls (*Strix varia*) and Spotted Owls (*Strix occidentalis*)'' (Buchanan *et al.* 2007) and ''Considering control of invasive barred owls to benefit California spotted owls: possible justification and draft methods,'' in Managing Vertebrate Invasive Species: Proceedings of an International Symposium (Livezey *et al.* 2007). The USFWS will consider the information in these documents in developing any experimental design for barred owl removal.

The experimental design for removal studies would likely consider multiple experimental sites and a paired sample design, including treatment areas where barred owls are removed and appropriate control areas where they are not. Experimental sites would likely include 1 or more of the 14 demographic study areas where existing, long-term studies of northern spotted owl population dynamics have been under way for nearly two decades (Anthony *et al.* 2006). This would allow us to compare northern spotted owl population data before and after experimental barred owl removal. Paired samples (*i.e.,* treatment and control areas) allow us to evaluate and address natural variation that might otherwise obscure the results potentially requiring longer or more extensive experiments to detect meaningful changes. Barred owl removal could involve lethal methods (killing), nonlethal methods (capture and relocation), or a combination of these, all of which will be considered in the NEPA process. Implementation of the experiments would likely occur over a period of approximately 3 to 10 years, beginning in 2010 or later and would require a permit under the Migratory Bird Treaty Act (16 U.S.C. 704).

Environmental Review of this Proposal

Prior to conducting this research, we will review the likely environmental effects and document the information in an EIS. A first step in preparing an EIS is to clearly identify the purpose(s) and need(s) for the proposed action. Our proposed research has the following three purposes:

(1) To contribute to fulfilling the intent of the ESA so ultimately, the protections afforded by the ESA are no longer necessary and the northern spotted owl may be removed from the list of threatened and endangered species;

(2) To obtain information regarding the effects of barred owls on northern spotted owl vital rates of occupancy, survival, reproduction, and population trend through experimental removal; and

(3) To determine the feasibility of removal of barred owls.

The need for the proposed research is to:

(1) Evaluate the response of northern spotted owl occupancy, survival, reproduction, and population trend to barred owl removal;

(2) Determine if barred owls can be effectively removed from an area and how much follow-up effort is required to maintain low population levels of barred owls; and

(3) Determine the cost of removal in different types of landscapes.

We will analyze a full range of reasonable alternatives meeting the purpose and need and the associated impacts of each. Potential alternatives considered to date for analysis in the EIS include, but are not limited to: (1) No experimental removal of barred owls, the No Action Alternative; (2) lethal experimental removal of barred owls; and (3) nonlethal experimental removal of barred owls, through relocation or captivity.

The environmental review of this project will be conducted in accordance with the requirements of NEPA, the National Environmental Policy Act Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and policies and procedures of the USFWS for compliance with those laws and regulations.

Request for Information

Comments and suggestions are invited from all interested parties to ensure consideration of a full range of alternatives related to the purpose and need and identification of all significant issues. We request that comments be as specific as possible in regard to the above-mentioned purposes and needs. We also request that comments include information, issues, and concerns regarding:

(1) The direct, indirect, and cumulative effects that implementation of one of the listed alternatives could have on endangered and threatened species and their habitats;

(2) Other possible alternatives and their associated effects;

(3) Potential adaptive management or monitoring provisions;

(4) Baseline environmental conditions within the range of the northern spotted owl;

(5) Other plans or projects that might be relevant to this project;

(6) Measures that would minimize and mitigate potentially adverse effects of the proposed project;

(7) Considerations for the ethical and humane treatment of barred owls removed during the experiments; and

(8) Any other information pertinent to evaluating the effects of this project on the human environment.

The environmental review will analyze and document the effects the considered alternatives would have on barred owls and northern spotted owls, as well as other components of the human environment, including but not limited to cultural resources, social resources (including public safety), economic resources, and environmental justice.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES**). Please submit e-mail comments to *BarredOwlEIS@fws.gov.* Please also include ''Attn: Barred Owl EIS'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Oregon Fish and Wildlife Office at phone number 503–231–6179. Please note that the e-mail address will be closed at the end of the public comment period.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the Oregon Fish and Wildlife Office (see **ADDRESSES**).

References Cited

A complete list of all references cited herein is available upon request from our Oregon Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Dated: December 3, 2009.

David Wesley,

Deputy Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. E9–29447 Filed 12–9–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2009–N255; 81420–1113–0000–F3]

Proposed Pacific Gas and Electric Safe Harbor Agreement for Interior Dune Species Located in Antioch Dunes in Contra Costa County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: This notice advises the public that Pacific Gas and Electric (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an Enhancement of Survival permit under the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicant and the Service for the federally endangered Lange's metalmark butterfly (*Apodemia mormo langei*), Antioch Dunes evening primrose (*Oenothera deltoids* ssp. *howellii*), and the Contra Costa wallflower (*Erysimum capitatum* var. *angustatum*) (collectively referred to as the Covered Species). The Agreement is available for public comment.

DATES: To ensure consideration, please send your written comments by January 11, 2010.

ADDRESSES: Send comments to Mr. Rick Kuyper, via U.S. mail at U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825, or via facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Kuyper, Sacramento Fish and Wildlife Office (*see* **ADDRESSES**); telephone: (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the document for review by contacting the individual named above. You may also make an appointment to view the document at the above address during normal business hours.

Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act (16 U.S.C. 1531 *et seq.*). Safe Harbor Agreements, and the subsequent enhancement of survival permits that are issued pursuant to Section 10(a)(1)(A) of the Act, encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners that they will not be subjected to increased property use restrictions as a result of their efforts to attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c) and 17.32(c). These permits allow any necessary future incidental take of covered species above the mutually agreed upon baseline conditions for those species in accordance with the terms and conditions of the permits and accompanying agreements.

The Agreement would cover two 6-acre parcels (Enrolled Property) that are located along the south shore of the San Joaquin River in Contra Costa County, California, in an area that was once part of an expanse of riverine sand dunes. The two parcels are located adjacent to, and on either side of, the 14-acre Sardis Unit of the Antioch Dunes National Wildlife Refuge (''Refuge''). Two transmission towers are located on the Enrolled Property—one 115 kV tower on the west parcel and one 230 kV tower on the east parcel. The Applicant relies on graveled and dirt access roads to reach all of its facilities on the Enrolled Property. Each tower has an established work area that is utilized for maintenance and operation activities.

The purpose of this Agreement is for the Service and the Applicant to collaborate and implement conservation measures for the Covered Species. This will be accomplished by restoring and maintaining suitable habitat within the Enrolled Property within the Antioch Dunes system. Restoration actions will primarily involve controlling invasive plant species. Such eradication techniques employed by the Applicant may involve the use of herbicides to be applied around host plants for the Lange's metalmark butterfly, as well as Antioch Dunes evening primrose and Contra Costa wallflower. The Service will provide the Applicant with a list of chemicals that are safe to use around host plants and that are not harmful to Lange's metalmark butterflies. Other weed eradication techniques may

include manual removal. Once nonnative plants are removed by the Applicant, the Service will be responsible for restoration of endangered and native plants to the Enrolled Parcels. The Service will enhance areas located away from the transmission towers by planting or seeding appropriate native plants, including Contra Costa wallflower, Antioch Dunes evening primrose, and host plants for the Lange's metalmark butterfly. Other natives may be planted or seeded into the sites as well. The majority of native plant restoration activities will occur in areas away from the two transmission towers such that when it is necessary for the Applicant to conduct maintenance on the towers, the overall damage to the habitat and probable take of endangered species will be minimized.

The Service expects that the proposed restoration activities will result in an increase in host plants for the Lange's metalmark butterfly throughout the Enrolled Property thus resulting in a net conservation benefit for this species. Additionally, the restoration activities will decrease threats to the Contra Costa wallflower and the Antioch Dunes evening primrose by reducing the amount of invasive, nonnative plants that outcompete the federally endangered plants.

The proposed duration of the Enhancement of Survival permit would be for 5 years, and would authorize the incidental taking of the Covered Species associated with: The restoration, enhancement, and maintenance of suitable habitat for the Covered Species; routine activities associated with maintenance and operation of the two transmission towers; and the potential future return of the Enrolled Property to baseline conditions. The Agreement also contains a monitoring component that will provide information on the success of weed eradication and will also assist the Refuge in early detection of new invasive plant species. Results of these monitoring efforts will be provided to the Service by the Applicant in an annual report.

Upon approval of this Agreement, and consistent with the Service's Safe Harbor Policy (64 FR 32717), the Service would issue an Enhancement of Survival permit to the Applicant. This permit will authorize the Applicant to take the Covered Species incidental to the implementation of the management activities specified in the Agreement, incidental to other lawful uses of the property including normal, routine land management activities, and incidental to return to baseline conditions if desired. Although take of listed plant species is not prohibited under the Act, and therefore cannot be authorized under an enhancement of survival permit, plant species may be included on a permit in recognition of the net conservation benefit provided to them under a safe harbor agreement. An applicant would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(c)(5) and 17.32(c)(5)) for all species included in the Enhancement of Survival permit. In addition to meeting other criteria, actions to be performed under an Enhancement of Survival permit must not jeopardize the existence of federally listed fish, wildlife, or plants.

Public Review and Comments

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in an Environmental Action Statement that is also available for public review.

Individuals wishing copies of the our Environmental Action Statement, and/or copies of the full text of the Agreement, including a map of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Service will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If the Service determines that the requirements are met, we will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicant for take of the Covered Species incidental to otherwise lawful activities in accordance with the terms of the Agreement. The Service will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: December 3, 2009.

Susan K. Moore,

Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.

[FR Doc. E9–29434 Filed 12–9–09; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–459 and 731–TA–1155 (Final)]

Commodity Matchbooks From India

Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from India of commodity matchbooks, provided for in subheading 3605.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of India and to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective October 29, 2008, following receipt of a petition filed with the Commission and Commerce by D.D. Bean & Sons, Co., Jaffrey, NH. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of commodity matchbooks from India were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of commodity matchbooks from India were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 17, 2009 (74 FR 34783). The hearing was

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

held in Washington, DC, on October 20, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 4, 2009. The views of the Commission are contained in USITC Publication 4117 (December 2009), entitled Commodity Matchbooks from India: Investigation Nos. 701–TA–459 and 731–TA–1155 (Final).

By order of the Commission.

Issued: December 4, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–29404 Filed 12–9–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Pursuant to Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on December 3, 2009, a proposed Consent Decree in *U.S.* v. *Ameron International Corp. et al.,* Civil Action No. 2:09-cv-8719, was lodged with the United States District Court for the Central District of California.

Under the proposed Consent Decree, twelve parties will pay the United States Environmental Protection Agency (''EPA'') a combined total of $3,868,902 to resolve liability arising under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), with respect to the Operating Industries, Inc. Superfund Site in Monterey Park, California. These parties are: Ameron International Corporation; B & C Plating Company; California Dairies, Inc.; Casex Co.; Energy Production & Sales Co.; Halliburton Energy Services, Inc.; International Extrusion Corporation; Jaybee Manufacturing Corporation; Luxfer, Inc.; Princess Cruises Limited; Thompson Drilling Company; and YRC, Inc.

The Department of Justice will receive comments relating to the proposed agreement for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Ameron International Corp. et al.,* DOJ Ref. No. 90–11–2–156/12.

The proposed Consent Decree may be examined at the Region 9 Office of the United States Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the proposed agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $22.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–29368 Filed 12–9–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0001]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Revision of a currently approved collection. Return A–Monthly Return of Offenses Known to the Police; Supplement to Return A–Monthly Return of Offenses Known to the Police

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on Volume 74, Number 191, Pages 51171–51172, on October 5, 2009, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 11, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS), Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Return A–Monthly Return of Offenses Known to the Police and Supplement to Return A–Monthly Return of Offenses Known to the Police.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms 1–720, 1–720a, 1–720b, 1–720c, 1–720d, 1–720e, and 1–706; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies. This collection is needed to collect information on Part I offense,

rate, trend, and clearance data as well as stolen and recovered monetary values of stolen property throughout the United States. Data are tabulated and published in the semiannual and preliminary reports and the annual Crime in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 17,738 law enforcement agency respondents at 10 minutes for hard copy and 5 minutes for electronic submissions for the Return A and 11 minutes for hard copy and 5 minutes for electronic submissions for the Supplement to Return A.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 40,411 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 4, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–29341 Filed 12–9–09; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health (MACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: MACOSH meeting; notice of.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH) was established under Section 7 of the Occupational Safety and Health (OSH) Act of 1970 to advise the Assistant Secretary of Labor for Occupational Safety and Health on issues relating to occupational safety and health in the maritime industries. The purpose of this **Federal Register** notice is to announce the Committee and workgroup meetings scheduled for January 19–20, 2010.

DATES: The Shipyard and Longshore workgroups will meet on Tuesday, January 19, 2010, 9 a.m. to 5 p.m., and the Committee will meet on Wednesday, January 20, 2010, from 9 a.m. to 5 p.m.

ADDRESSES: The Committee and workgroups will meet at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. On Tuesday, January 19, 2010, the Longshore workgroup will meet in C–5515–1A and the Shipyard workgroup will meet in conference room C–5521–4. On Wednesday, January 20, 2010, the Committee will meet in conference room C–5521–4. Mail comments, views, or statements in response to this notice to Danielle Watson, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone (202) 693–1870; fax (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: For general information about MACOSH and this meeting, contact: Joseph V. Daddura, Director, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone: (202) 693–2067. Individuals with disabilities wishing to attend the meeting should contact Danielle Watson at (202) 693–1870 no later than January 5, 2010, to obtain appropriate accommodations.

SUPPLEMENTARY INFORMATION: All MACOSH meetings are open to the public. All interested persons are invited to attend the MACOSH meeting at the time and location listed above. The MACOSH agenda will include: An OSHA activities update; a review of the minutes from the previous meeting; and reports from each workgroup. The Shipyard workgroup will discuss the following topics: Safety and Health Injury Prevention Sheets (SHIPS) rigging guidance document; arc flash guidance; activities related to shipyard employment; commercial fishing industry quick cards; injury and fatality data initiative; and scaffolding and falls (29 CFR 1915 subpart E). The Longshore workgroup discussion will cover welding guidance; safety zone guidance; speed limits in marine terminals; and container repair safety guidance.

Public Participation: Written data, views, or comments for consideration by MACOSH on the various agenda items listed above should be submitted to Danielle Watson at the address listed above. Submissions received by January 5, 2010, will be provided to Committee members and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted as time permits.

Authority: This notice was prepared under the direction of Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to Sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)(1), 656(b)), the Federal Advisory Committee Act (5 U.S.C. App. 2), Secretary of Labor's Order 5–2007 (72 FR 31160), and 29 CFR part 1912.

Signed at Washington, DC, this 4th day of December 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–29418 Filed 12–9–09; 8:45 am]

BILLING CODE 4510–26–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Spouse Annuity Under the Railroad Retirement Act; OMB 3220–0042 Section 2(c) of the Railroad Retirement Act (RRA), provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the RRA. The age requirements for a spouse annuity depend on the employee's age and date of retirement and the employee's years of railroad service. The requirements relating to the annuities are prescribed in 20 CFR 216, 218, 219, 232, 234, and 295.

The RRB currently uses the electronic *AA–3cert, Application Summary and Certification* process and manual Form AA–3, *Application for Spouse/Divorced Spouse Annuity,* to obtain the information needed to determine an applicant's entitlement to an annuity and the amount of the annuity.

The AA–3cert process obtains information from an applicant by means

of an interview with an RRB field-office representative. During the interview, the field-office representative enters the information obtained into an on-line information system. Upon completion of the interview, the applicant receives Form AA–3cert, Application Summary and Certification, which summarizes the information that was provided by/or verified by the applicant, for review and signature. The RRB also uses manual Form AA–3 in instances where the RRB representative is unable to contact the applicant in person or by telephone i.e., the applicant lives in another country. Completion of Forms AA–3 and AA–3cert is required to obtain a benefit. One response is requested of each respondent. The RRB proposes minor non-burden impacting editorial changes to Form(s) AA–3cert and AA–3. The RRB estimates the burden for the collection as follows:

ESTIMATED BURDEN

Form No.	Estimated annual responses	Estimated completion time (per response)	Estimated annual burden (hours)
AA–3cert	10,800	30	5,400
AA–3 (manual)	250	58	242
Total	11,050	.....	5,642

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Patricia.Henaghan@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E9–29460 Filed 12–9–09; 8:45 am]

BILLING CODE 7905–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology

Notice of Meeting: Partially Closed Meeting of the President's Council of Advisors on Science and Technology.

ACTION: Public notice.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App.

DATES: January 7, 2010.

ADDRESSES: The meeting will be held at the National Academy of Sciences building, 2100 C Street, NW., Lecture Room, Washington, DC.

Type of Meeting: Open and closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on January 7, 2010 from 10 a.m.–6 p.m. with a lunch break from 12 p.m. to 2 p.m.

Open Portion of Meeting: During this open meeting, PCAST is tentatively scheduled to hear presentations from representatives of the Office of Science and Technology Policy, the Department of Energy, the Department of Homeland Security, the Department of Agriculture, and the Department of Commerce, as well as an expert in healthcare policy. Speakers will address the following issues: Energy research, development, and demonstration; homeland security science and technology; agriculture research; science, technology, and innovation; and healthcare policy. Additional information and the agenda will be posted at the PCAST Web site at: *http://www.ostp.gov/cs/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately 1 hour with the President on January 7, 2010, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1). The precise date and time of this potential meeting has not yet been determined.

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on January 7, 2010 at a time specified in the meeting agenda posted on the PCAST Web site [*http://www.ostp.gov//pcast*]. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the January meeting, interested parties should register to speak at *http://www.ostp.gov/pcast,* no later than 5 p.m. Eastern Time on Wednesday, December 30, 2009. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 35 copies of their oral comments for distribution to the participants and public at the meeting.

Written Comments: Although written comments are accepted until the date of the meeting, written comments should be submitted to PCAST at least two weeks prior to each meeting date so that the comments may be made available to the PCAST members prior to the meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://www.ostp.gov/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA,

all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

FOR FURTHER INFORMATION CONTACT: For Further Information: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://www.ostp.gov/pcast.* A live video webcast and an archive of the webcast after the event will be available at *http://www.ostp.gov//pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Deborah D. Stine, PCAST Executive Director, at *dstine@ostp.eop.gov,* (202) 456–6006. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226 on September 30, 2001. The PCAST is an advisory group of the nation's leading scientists and engineers who directly advise the President and the Executive Office of the President. PCAST makes policy recommendations in the many areas where understanding of science, technology, and innovation is key to strengthening our economy and forming policy that works for the American people. PCAST is administered by the Office of Science and Technology Policy (OSTP). PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; Dr. Harold E. Varmus, President, Memorial Sloan-Kettering Cancer Center; and Dr. Eric S. Lander, President and Director, Broad Institute of MIT and Harvard.

Meeting Accomodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Stine at least ten business days prior to the meeting so that appropriate arrangements can be made.

M. David Hodge,

Operations Manager.

[FR Doc. E9–29488 Filed 12–9–09; 8:45 am]

BILLING CODE 3170–W9–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 3a–4; SEC File No. 270–401; OMB Control No. 3235–0459.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 3a–4 (17 CFR 270.3a–4) under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Investment Company Act'' or ''Act'') provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include ''wrap fee'' and ''mutual fund wrap'' programs, generally are designed to provide professional portfolio management services to clients who are investing less than the minimum usually required by portfolio managers but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially similar securities in their accounts. Some of these investment advisory programs may meet the definition of investment company under the Act because of the similarity of account management.

In 1997, the Commission adopted rule 3a–4, which clarifies that programs organized and operated in a manner consistent with the conditions of rule 3a–4 are not required to register under the Investment Company Act or comply with the Act's requirements.[1] These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

Rule 3a–4 provides that each client's account must be managed on the basis of the client's financial situation and investment objectives and consistent with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor[2] (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.[3] In addition, the sponsor (or its designee) must contact the client annually to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) must also notify the client quarterly, in writing, to contact the sponsor (or its designee) regarding changes to the client's financial situation, investment objectives, or restrictions on the account's management.[4]

The program must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

The requirement that the sponsor (or its designee) obtain information about each new client's financial situation and investment objectives when their account is opened is designed to ensure that the investment adviser has sufficient information regarding the client's unique needs and goals to

[1] Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Release No. 22579 (Mar. 24, 1997) (62 FR 15098 (Mar. 31,1997)) (''Adopting Release''). In addition, there are no registration requirements under section 5 of the Securities Act of 1933 for these programs. *See* 17 CFR 270.3a–4, introductory note.

[2] For purposes of rule 3a–4, the term ''sponsor'' refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

[3] Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account. The rule does not require that a client be able to require particular securities be purchased for the account.

[4] The sponsor also must provide a means by which clients can contact the sponsor (or its designee).

enable the portfolio manager to provide individualized investment advice. The sponsor is required to contact clients annually and provide them with quarterly notices to ensure that the sponsor has current information about the client's financial status, investment objectives, and restrictions on management of the account. Maintaining current information enables the portfolio manager to evaluate each client's portfolio in light of the client's changing needs and circumstances. The requirement that clients be provided with quarterly statements of account activity is designed to ensure each client receives an individualized report, which the Commission believes is a key element of individualized advisory services.

The Commission staff estimates that 3,109,671 clients participate each year in investment advisory programs relying on rule 3a–4. Of that number, the staff estimates that 220,805 are new clients and 2,888,866 are continuing clients. The staff estimates that each year investment advisory program sponsors staff engage in 1.5 hours per new client and 0.75 hours per continuing client to prepare, conduct and/or review interviews regarding the client's financial situation and investment objectives as required by the rule. Furthermore, the staff estimates that each year investment advisory program staff spends 1 hour per client to prepare and mail quarterly client account statements, including notices to update information. Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 5,607,528 hours.

The total annual hour burden of 5,607,528 hours represents an increase of 1,158,112.5 hours from the prior estimate of 4,449,415.5 hours. This increase principally results from an increase in the number of continuing clients, but also reflects an increase in the estimated burden hours associated with several of the collections of information required under the rule. The increase in estimated burden hours per collection of information results from an increase in burden hours reported by representatives of investment advisers that rely on rule 3a–4 that Commission staff surveyed.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not rquired to respond to a collection of information unless it displays a currenly valid control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

December 4, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29393 Filed 12–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61119; File No. S7–05–09]

Order Extending and Modifying Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With Request From ICE Trust U.S. LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments

December 4, 2009.

I. Introduction

Over the past year, the Securities and Exchange Commission (''Commission'') has taken multiple actions to protect investors and ensure the integrity of the nation's securities markets, including actions [1] designed to address concerns related to the market in credit default swaps (''CDS'').[2] The over-the-counter (''OTC'') market for CDS has been a source of particular concern to us and other financial regulators, and we have recognized that facilitating the establishment of central counterparties (''CCPs'') for CDS can play an important role in reducing the counterparty risks inherent in the CDS market, and thus can help mitigate potential systemic impacts. We have therefore found that taking action to help foster the prompt development of CCPs, including granting temporary conditional exemptions from certain provisions of the federal securities laws, is in the public interest.[3]

The Commission's authority over the OTC market for CDS is limited. Specifically, Section 3A of the Securities Exchange Act of 1934 (''Exchange Act'') limits the Commission's authority over swap agreements, as defined in Section 206A

[1] *See generally* Securities Exchange Act Release No. 60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by ICE Clear Europe Limited), Securities Exchange Act Release No. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by Eurex Clearing AG), Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009) (temporary exemptions in connection with CDS clearing by Chicago Mercantile Exchange Inc.), Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009) (temporary exemptions in connection with CDS clearing by ICE US Trust LLC (now ''ICE Trust U.S. LLC'')) (hereinafter, the ''March ICE Trust Order''), Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary exemptions in connection with CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) and other Commission actions discussed therein.

In addition, we have issued interim final temporary rules that provide exemptions under the Securities Act of 1933 and the Securities Exchange Act of 1934 for CDS to facilitate the operation of one or more central counterparties for the CDS market. *See* Securities Act Release No. 8999 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009) (initial approval); Securities Act Release No. 9063 (Sep. 14, 2009), 74 FR 47719 (Sep. 17, 2009) (extension until Nov. 30, 2010).

Further, the Commission has provided temporary exemptions in connection with Sections 5 and 6 of the Securities Exchange Act of 1934 for transactions in CDS. *See* Securities Exchange Act Release No. 59165 (Dec. 24, 2008), 74 FR 133 (Jan. 2, 2009) (initial exemption); Securities Exchange Act Release No. 60718 (Sep. 25, 2009), 74 FR 50862 (Oct. 1, 2009) (extension until Mar. 24, 2010).

[2] A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity (''reference entity'') or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take positions in bonds or in segments of the debt market as represented by an index, or to take positions on the volatility in credit spreads during times of economic uncertainty.

Growth in the CDS market has coincided with a significant rise in the types and number of entities participating in the CDS market. CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant to their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms, and hedge funds have entered the CDS market.

[3] *See generally* actions referenced in note 1, *supra.*

of the Gramm-Leach-Bliley Act.[4] For those CDS that are swap agreements, the exclusion from the definition of security in Section 3A of the Exchange Act, and related provisions, will continue to apply. The Commission's action today does not affect these CDS, and this Order does not apply to them. For those CDS that are not swap agreements (''non-excluded CDS''), the Commission's action today provides temporary conditional exemptions from certain requirements of the Exchange Act.

The Commission believes that using well-regulated CCPs to clear transactions in CDS provides a number of benefits, by helping to promote efficiency and reduce risk in the CDS market and among its participants, contributing generally to the goal of market stability, and by requiring maintenance of records of CDS transactions that would aid the Commission's efforts to prevent and detect fraud and other abusive market practices.[5]

Earlier this year, the Commission granted temporary conditional exemptions to ICE Trust U.S. LLC (''ICE Trust'') and certain related parties to permit ICE Trust to clear and settle CDS transactions.[6] Those exemptions are scheduled to expire on December 7, 2009. ICE Trust has requested that the Commission extend the exemptions, and expand them to address activities in connection with ICE Trust clearing CDS transactions of its members' customers (in addition to clearing CDS transactions of members and their affiliates, as permitted by the current exemption).[7]

Based on the facts presented and the representations made on behalf of ICE Trust,[8] and for the reasons discussed in this Order, and subject to certain conditions, the Commission is extending the exemption granted in the March ICE Trust Order, and is expanding it to accommodate customer clearing. Specifically, the Commission is extending the temporary ICE Trust conditional exemption from clearing agency registration under Section 17A of the Exchange Act solely to perform the functions of a clearing agency for certain non-excluded CDS transactions. The Commission also is extending the temporary exemption of eligible contract participants and others from certain Exchange Act requirements with respect to non-excluded CDS cleared by ICE Trust. In addition, this order conditionally exempts on a temporary basis ICE Trust clearing members from broker-dealer registration requirements and related requirements in connection with using ICE Trust to clear CDS transactions of their customers. The Commission further is extending the temporary exemption of ICE Trust and certain of its clearing members from the registration requirements of Sections 5 and 6 of the Exchange Act solely in connection with the calculation of mark-to-market prices for non-excluded CDS cleared by ICE Trust. These exemptions are temporary and will expire on March 7, 2010.

II. Discussion

A. Description of ICE Trust's Activities to Date and Proposed Customer Clearing Activities

ICE Trust's request for an extension of its current temporary exemptions and for an expansion of those exemptions to accommodate clearing of customer CDS transactions describes how ICE Trust has cleared CDS to date and how the proposed arrangements for central clearing of customer CDS transactions would operate.[9] The request also makes representations about the safeguards associated with those arrangements, as described below.[10]

1. ICE Trust CDS Clearing Activity to Date

ICE Trust has cleared the proprietary index CDS transactions of its clearing members since March 9, 2009, through acceptance and novation of those transactions.[11] As of October 30, 2009, ICE Trust had cleared approximately $2.64 trillion notional amount of CDS contracts based on indices of securities. ICE Trust intends in the near future to also clear single-name CDS contracts based on individual reference entities or securities.

In clearing CDS transactions, ICE Trust has made use of procedures, described in the initial request for relief, whereby it has periodically required participants to execute certain CDS trades at the applicable end-of-day settlement price to enhance the reliability of end-of-day settlement

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[4] 15 U.S.C. 78c–1. Section 3A excludes both a non-security-based and a security-based swap agreement from the definition of ''security'' under Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a ''swap agreement'' as ''any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act * * *) * * * the material terms of which (other than price and quantity) are subject to individual negotiation.'' 15 U.S.C. 78c note.

[5] *See generally* actions referenced in note 1, *supra*.

[6] For purposes of this Order, ''Cleared CDS'' means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Trust, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which: (i) The reference entity, the issuer of the reference security, or the reference security is one of the following: (A) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; (B) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States; (C) a foreign sovereign debt security; (D) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or (E) an asset-backed security issued or guaranteed by the Federal National Mortgage Association (''Fannie Mae''), the Federal Home Loan Mortgage Corporation (''Freddie Mac'') or the Government National Mortgage Association (''Ginnie Mae''); or (ii) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (i). As discussed above, the Commission's action today does not affect CDS that are swap agreements under Section 206A of the Gramm-Leach-Bliley Act. *See* text at note 4, *supra*.

[7] *See* Letter from Kevin McClear, ICE Trust, to Elizabeth Murphy, Secretary, Commission, Dec. 4, 2009 (''December 2009 request''). Market participants have committed to achieve customer access to CDS clearing by December 15, 2009. *See* Letter from dealers and buy-side institutions to Federal Reserve Bank of New York (Jun. 2, 2009) (*http://www.newyorkfed.org/newsevents/news/markets/2009/060209letter.pdf*) (''It is our goal to achieve buy-side access to CDS clearing (through either direct CCP membership or customer clearing) with customer initial margin segregation and portability of customer transactions no later than December 15, 2009.'').

[8] *See* December 2009 request. The exemptions we are granting today are based on all of the representations made in the December 2009 request on behalf of ICE Trust, which incorporate representations made on behalf of ICE Trust as part of the request that preceded our earlier relief in connection with CDS clearing by ICE Trust. We recognize, however, that there could be legal uncertainty in the event that one or more of the underlying representations were to become inaccurate. Accordingly, if any of these exemptions were to become unavailable by reason of an underlying representation no longer being materially accurate, the legal status of existing open positions in non-excluded CDS that previously had been cleared pursuant to the exemptions would remain unchanged, but no new positions could be established pursuant to the exemptions until all of the underlying representations were again accurate.

[9] *See* December 2009 request, *supra* note 7. The description in this Order of ICE Trust's proposed activities also is based on the provisions of ICE Trust's rules.

[10] ICE Trust has represented that there have been no material changes to the representations made in the letter that preceded the relief we initially granted to it, apart from the proposal to clear customer CDS transactions, and ICE Trust has incorporated the representations made in its earlier letter into the current request for relief.

[11] ICE Trust novates those cleared proprietary CDS transactions by becoming the seller of credit protection to the clearing member that is the buyer under the CDS, and the buyer of credit protection from the clearing member that is the seller under the CDS. ICE Trust collects initial and mark-to-market margin to secure each clearing member's obligations to ICE Trust under the cleared transactions, and ICE Trust has established a guaranty fund to provide additional financial protection in the case of clearing member default.

prices submitted as part of the daily mark-to-market process.[12] ICE Trust represents that it wishes to continue periodically requiring clearing members to execute certain CDS trades in this manner, and has requested the extension of the applicable relief.

2. Proposed Activity Clearing CDS Transactions of Members' Clients

ICE Trust has proposed a ''Non-Member Framework'' for clearing the CDS transactions of its members' clients. Under this framework, client positions could be submitted to ICE Trust for clearing in one of two ways. First, under the ''bilateral model,'' clients could execute a CDS transaction directly with a clearing member (acting in a principal capacity), followed by the clearing member submitting a trade to ICE Trust with terms corresponding to the client-member trade; if the latter trade is accepted by ICE Trust,[13] two positions would be created within ICE Trust—a Client Position of the clearing member that mirrors the transaction between the client and the clearing member, and an offsetting House Position of the clearing member.[14]

Alternatively, under the ''prime broker'' or ''designated clearing member'' (or ''DCM'') model, a client could agree to a CDS transaction with an ICE Trust clearing member (''executing dealer'') other than the member that clears the client's transactions. Then, pursuant to a give-up or similar agreement, the clearing member (as prime broker) and the executing dealer would enter into a trade that is submitted to ICE Trust for clearing, and the clearing member and the client would simultaneously enter into a trade.[15] The net result would be that the client's clearing member and the client would be counterparties to one transaction, the clearing member would have a Client Position with ICE Trust, and the executing dealer would have a House Position with ICE Trust.[16]

ICE Trust has no rule requiring an executing dealer to be a clearing member. ICE Trust Clearing Rule 314, moreover, requires that ICE Trust ensure that there shall be open access to its clearing system for all execution venues and trade processing platforms.[17]

ICE Trust expects that transactions under the DCM model will be submitted to ICE Trust through one or more ''authorized trade processing platforms'' that will facilitate the affirmation of the trade terms by the client, executing dealer and DCM, as well as the electronic submission of the affirmed trade to ICE Trust for clearing.[18] ICE Trust also expects that the platform would submit, to the relevant parties, notice of ICE Trust's acceptance or rejection of the trade. Authorized trade processing platforms may provide additional back-office or similar services to clearing members or clients. ICE Trust expects to enter into arrangements to accept transactions from multiple authorized trade processing platforms.[19]

Under the framework for clearing client transactions, ICE Trust would have no direct relationship with, or liability to, clients. To facilitate the transfer or liquidation of client-member transactions in the event of clearing member default, however, clearing members would pledge to ICE Trust the clearing members' rights under the client-member transactions and their rights to related margin, to secure the clearing members' obligations to ICE Trust under the related client positions, and the clearing member's obligations to other clients under other client-member transactions.

The cleared CDS transaction between the clearing member and its client will be documented pursuant to a negotiated International Swaps and Derivatives Association (''ISDA'') master agreement between those parties, supplemented by a standard annex approved by ICE Trust. This standard annex would treat these cleared client-member CDS transactions differently from other derivatives transactions between those parties: it would make the cleared CDS transactions subject to separate ICE Trust margin requirements, it would incorporate a standard definition of clearing member default (based on a determination by ICE Trust), and it would specify procedures for remedies in the case of clearing member default. As discussed below, under the standard annex the client could also agree that certain default portability rules would apply.[20]

3. Framework for Collection and Protection of Client Margin

ICE Trust states that the Non-Member Framework is intended to protect clients from default by their clearing members, particularly with regard to their initial margin. Also, the Non-Member Framework, and central clearing of CDS generally, is intended to enhance the financial stability of CDS markets as a whole.[21]

a. Margin Requirements for Clearing Members and Clients

ICE Trust rules will require clearing members to collect initial and variation margin from clients for CDS transactions cleared by ICE Trust, in an amount at least equal to the amount of margin ICE Trust would require on a gross basis for the related Client Positions. Clearing members would be able to collect additional margin from customers beyond what ICE Trust rules require.[22]

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[12] In particular, as part of this mark-to-market process, ICE Trust periodically requires clearing members to execute certain CDS trades at the price where the prices submitted by clearing members cross. ICE Trust requires these trades on 30 random days during any year and at the end of each quarter.

[13] ICE Trust will accept all CDS that meet the standards set forth in its rules, unless it determines not to accept the transaction for risk management reasons.

[14] ''Client Positions'' are cleared CDS transactions between ICE Trust and the clearing member that are offset or mirrored on a back-to-back basis by CDS transactions between the clearing member and the client. ''House Positions'' are all other cleared CDS transactions of a member, or affiliate, and ICE Trust.

ICE Trust would not have market exposure in connection with that transaction because it would have two offsetting positions with the clearing member.

[15] ICE Trust expects that, initially, client transactions likely will be submitted for clearing using the DCM model. These transactions will be subject to DCM Standard Terms, published by ICE Trust, that will provide procedures and timing requirements for submitting transactions to clearing. ICE Trust expects that the bilateral model will be used initially for back-loading of existing transactions into central clearing.

[16] As with the bilateral model, ICE Trust would not have market exposure in connection with the cleared transaction. In this situation the clearing member's Client Position with ICE Trust would offset the executing dealer's House Position with ICE Trust.

[17] ICE Trust Clearing Rule 314. Based on market feedback, ICE Trust anticipates that, initially, executing dealers will be Clearing Members. ICE Trust does not prohibit an executing dealer that is not a Clearing Member from having a trade submitted for clearance at ICE Trust through the Clearing Member. However, currently none of the ''authorized trade processing platforms'' permit, as an operational matter, such an arrangement. ICE Trust Clearing Rules, however, do provide for open access to its clearing system for all execution venues and trade processing platforms.

[18] Under this approach, for example, when a client and executing dealer agree to the terms of a transaction (including that the transaction should be submitted to ICE Trust for clearing), the executing dealer will submit the trade terms to the authorized trade processing platform, which will forward those terms to the client for affirmation. Once the client has affirmed the trade, the platform will forward those terms to the DCM designated by the client for affirmation. Once all three parties have affirmed the transaction, it will be submitted to ICE Trust for clearing. ICE Trust will determine whether to accept or reject the submitted trade in accordance with its risk management policies and procedures.

[19] ICE Trust states that it has committed to ensure that there will be open access to ICE Trust's clearing system for platforms that meet ICE Trust's qualifications and criteria to provide the necessary services.

[20] *See* part II.A.4.c, *infra*.

[21] ICE Trust states that it will implement a program to monitor for its clearing members' compliance with this segregation framework.

[22] As discussed below, this Order sets forth conditions intended to protect all of the margin that clearing members collect from their clients, including this type of ''additional'' margin.

Clearing members will be permitted to calculate the initial margin collected from individual clients on a net basis, across all of the CDS transactions of that customer that are cleared through ICE Trust. Clearing members, however, would not be permitted to net across multiple clients cleared through ICE Trust. This required ''ICE Gross Margin'' that a clearing member collects from a client must be pledged by the client in favor of the clearing member, and must not be subject to liens or other encumbrances in favor of third parties.

Under ICE Trust rules, clearing members must post the ICE Gross Margin they collect from clients to ICE Trust, as custodian, promptly upon receipt, and it is expected that clearing members would transfer this margin on the business day of receipt.[23] Prior to posting, the clearing member must maintain that ICE Gross Margin in a segregated client omnibus account or in an individual segregated client account, on its own books or on the books of a custodian, pursuant to which the clearing member would receive the margin in an agency or custodial capacity.

ICE Trust will determine a net initial margin requirement for each clearing member with regard to the cleared CDS positions of all of the member's clients. Clearing members could use collateral posted by clients to satisfy this ''ICE Net Margin'' obligation.[24]

b. Treatment of Client Margin Required Pursuant to ICE Trust Rules

Clearing members must post all the margin they collect from customers pursuant to ICE Trust requirements—both the ICE Net Margin and the remainder of the margin that clearing members collect from their clients pursuant to ICE Trust rules—to the Custodial Client Omnibus Margin Account[25] that would be maintained at ICE Trust or a subcustodian.

The Custodial Client Omnibus Margin Account will be held for the benefit of all clients of the relevant clearing member (or for the clearing member as agent or custodian on behalf of such clients), and will be segregated from other assets of the clearing member (including assets in its proprietary ''House Account''). The Custodial Client Omnibus Margin Account will consist of a cash collateral subaccount for cash margin and a custody subaccount for securities collateral. ICE Trust will maintain title to cash in the cash collateral subaccount (ICE Trust, however, will be obligated to return the cash as required for the benefit of the relevant client or of the clearing member as the client's agency or custodian), and ICE Trust will hold assets in the custody subaccount as custodian (subject to a security interest in favor of the clearing member or ICE Trust as applicable). Assets in the Custodial Client Omnibus Margin Account may be invested in a range of investments as permitted by ICE Trust's Custodial Asset Policies,[26] and the clearing member and its client may agree how the return on those investments may be distributed between them. ICE Trust rules will require clearing members to maintain records of the identity of the clients, the margin they post, the transfer of those assets to the Custodial Client Omnibus Margin Account and the use of that margin.

c. Treatment of additional margin that clearing members collect from clients beyond ICE Trust requirements

Clearing members may collect margin from clients, in connection with Cleared CDS transactions, in excess of the margin that ICE Trust rules require they collect. ICE Trust permits this ''additional'' margin to be posted to the Custodial Client Omnibus Margin Account, but does not require that it be posted to that account. Under the conditions of this Order's temporary exemption from certain broker-dealer related requirements of the Exchange Act, however, such ''additional'' margin must be posted either to the Custodial Client Omnibus Margin Account, or else to a third-party custodian that is unaffiliated with the clearing member.[27] The temporary exemption from those broker-dealer related requirements is unavailable to any clearing member that fails to segregate customer collateral in that manner.

d. Treatment of Variation Margin

ICE Trust states that the amount of variation margin that must be provided to a client, or by a client, will be determined daily for that client's portfolio based on ICE Trust's end-of-day settlement price determinations. ICE Trust further states that in the event that ICE Trust owes variation margin to a clearing member in respect of client positions that have moved in the client's favor, the standard annex would provide that the clearing member has a corresponding obligation to provide variation margin in favor of clients.[28]

4. Default and Portability Rules

a. Termination Amounts

In the event a client-member transaction is terminated due to clearing member default, termination amounts owed by a client on CDS transactions cleared by ICE Trust would not be netted against termination amounts owed with respect to the client's other trades with that clearing member. This is intended to facilitate portability of positions.

Moreover, in the event of member default, ICE Trust would undertake a close-out process that separately would calculate net termination with respect to the closeout of the clearing member's House Positions and its Client Positions. ICE Trust would not undertake this process, however, in the event that the defaulting clearing member's receiver (such as the Federal Deposit Insurance Corporation or similar authority) transfers the relevant positions to another non-defaulting entity in accordance with applicable law.

The rules generally would not permit netting between a clearing member's Client Positions and House Positions; however, ICE Trust would offset any amount that the clearing member owes to ICE Trust in respect of Client Positions against any amount that ICE Trust owes to the clearing member in respect of House Positions.

If a clearing member default is due to a default resulting from a client's position, ICE Trust may use the margin

[23] ICE Trust states, however, that this may not be feasible when the clearing member receives the client margin toward the end of the business day.

Clearing members and clients may agree that the clearing member will post with ICE Trust a different type of collateral than what the client posts with ICE Trust, and that the collateral posted with ICE Trust will become the client's property. Thus, for example, a client and clearing member may agree that cash collateral that the client posts to the clearing member may be invested in U.S. Treasury securities, and posted to ICE Trust as such.

[24] Clearing members also may initially satisfy this obligation with their proprietary assets, pending receipt of required margin from their clients.

[25] The ''Custodial Client Omnibus Margin Account'' is one or more accounts maintained by or on behalf of ICE Trust ''with respect to a Participant for the purposes of holding on an omnibus basis margin of Non-Participant Parties posted to that Participant in respect of their respective Minimum ICE Trust Required Initial Margin and Participant Excess Margin requirements, as applicable.'' ICE Trust rules state that ICE Trust may establish a separate account or subaccount with respect to a portion of the Custodial Client Omnibus Margin Account corresponding to the Net Client Omnibus Margin Amount.

[26] ICE Trust states that these generally include assets of the type allowed under CFTC Rule 1.25. However, a narrower range of assets is acceptable margin for satisfying the net margin requirement. This includes only cash in specified currencies and G–7 government debt for initial margin, and only cash for mark-to-market margin.

[27] *See* Part II.E, *infra*.

[28] Over the duration of this temporary exemption, the staff intends to evaluate the protections afforded to clients' mark-to-market profits associated with Cleared CDS positions, and to consider the potential benefits of requiring clearing members to segregate clients' variation margin in connection with Cleared CDS positions.

posted to the clearing member's Custodial Client Omnibus Margin Account up to the amount of the ICE Net Margin requirement.[29] ICE Trust will not be able to access the remainder of the assets of a non-defaulting client in the account in amounts above the net margin requirement.[30] The Commission notes that, as a result of these rules, clients of a clearing member are subject to the risk of loss resulting from the default of another client of that clearing member, up to the amount of the clearing member's net margin requirement.

b. Pre-Default Portability

ICE Trust rules require clearing members to agree to the transfer of client-member transactions and related positions upon client request, provided that the client obtains a new clearing member willing to accept the positions. In connection with that transfer, ICE Trust would move related margin between the Custodial Client Omnibus Margin Accounts of the two clearing members.

c. Post-Default Portability

If a client agrees to the application of the default rules set forth in the standard annex, it would consent that, in the event of the clearing member's default, ICE Trust may transfer client-member transactions to a new clearing member, or otherwise establish replacement transactions.[31] The client also would agree not to exercise its rights to terminate during the transfer period.[32]

If the clearing member is in default, ICE Trust rules would permit ICE Trust to transfer, or arrange for the transfer of, the defaulting clearing member's client positions and related transactions and margin to a new clearing member. Alternatively, ICE Trust could terminate the existing transactions and establish new positions with the new clearing member. ICE Trust may attempt to transfer some or all of the client-member transactions. Also, ICE Trust may (but would not be obligated to) take into account client prearrangements for the use of one or more ''backup'' clearing members to which their transactions would be transferred in the event their primary clearing member defaults.

d. Liquidation Procedures

If ICE Trust is unable to transfer or terminate and replace client-member transactions during the transfer period, the client may terminate the client-member transactions as provided by the terms of the agreement.[33] ICE Trust then would determine the close-out price for the client positions and the client-member transaction.

If a client owes the clearing member with respect to the cleared CDS transactions, the client's margin in the Custodial Client Omnibus Margin Account will be applied to satisfy that obligation, and thereafter would be available to pay amounts owed to ICE Trust in connection with the related client positions and other clients in respect of their client-member transactions. Conversely, clients owed by the clearing member on a net basis will have a claim for that amount, together with their *pro rata* share of margin being used to satisfy the ICE Net Margin Requirement.[34]

Clients will be separately entitled to the return of their remaining excess margin in the Custodial Client Omnibus Margin Account, except to the extent the margin is applied to satisfy the client's obligation to the clearing member.[35] Clients will share in the assets in the Custodial Client Omnibus Margin Account in proportion of their claims, but will not be entitled to the return of specific assets in that account.

5. Other Clearing Member Requirements Related to Customer Clearing

ICE Trust states that before offering the Non-Member Framework, it will adopt a requirement that clearing members subject to the framework are regulated by: (i) A signatory to the International Organization of Securities Commissions (''IOSCO'') Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, or (ii) a signatory to a bilateral arrangement with the Commission for enforcement cooperation.

B. Extended Temporary Conditional Exemption From Clearing Agency Registration Requirement

On March 6, 2009, in connection with its efforts to facilitate the establishment of one or more central counterparties (''CCP'') for Cleared CDS, the Commission issued the March ICE Trust Order, conditionally exempting ICE Trust from clearing agency registration under Section 17A of the Exchange Act on a temporary basis. Subject to the conditions in that order, ICE Trust is permitted to act as a CCP for Cleared CDS by novating trades of non-excluded CDS that are securities and generating money and settlement obligations for participants without having to register with the Commission as a clearing agency. The March ICE Trust Order expires on December 7, 2009. Pursuant to its authority under Section 36 of the Exchange Act,[36] for the reasons described herein, the Commission is

[29] ICE Trust cannot use a client's positions in this account if the clearing member's default was the result of its proprietary activities, rather than the result of a default resulting from a client's position.

In the event of a clearing member's default resulting from a Client Position, net losses to ICE Trust would be paid from the following sources in order: (i) Any margin of the defaulting client held in the Custodial Client Omnibus Margin Account, to the extent of that client's obligations to the clearing member; (ii) amounts received from clients under their client-member transactions; (iii) the defaulting clearing member's house margin; (iv) the defaulting clearing member's contribution to the guaranty fund; (v) the defaulting clearing member's Custodial Client Omnibus Margin Account up to the amount of the net margin requirement; and (vi) other guaranty fund contributions. ICE Trust would not need to apply these assets to the extent it can close out or replace the defaulting clearing member's transactions without loss to ICE Trust.

[30] ICE Trust, however, could apply all of the margin that a defaulting client has posted into the account.

[31] Under the standard annex, only the client—and not the clearing member—can elect as to whether the default portability rules will apply to the cleared transaction.

If the client does not agree to the use of the default portability rules, then the customer could apply the liquidation procedures discussed below in part II.A.4.d upon the clearing member's default.

[32] The transfer period will be limited to three business days or fewer.

[33] The client alternatively may opt out of the liquidation procedures, in which case the client-member transactions also will be terminated.

[34] Clients will have available, in respect of their Net Termination Claims, an amount equal to the sum of: (i) The remaining amount of the ICE Net Margin Requirement after application by ICE Trust together with any net amounts paid by ICE Trust in respect of the termination of Client Positions, plus (ii) any termination amounts paid by Clients that is not applied by ICE Trust, plus (iii) the amount of any client's excess margin applied to its obligations. If these proceeds are insufficient to pay all Net Termination Claims, clients will share in the proceeds *pro rata*, based on their respective claims.

[35] The Standard Annex provides that if the clearing member is in default and the Client owes a net termination payable, amounts the client owes to the clearing member cannot be netted with amounts the clearing member owes to the Client in respect of any non-cleared Client position. Funds that the client owes to the clearing member in respect of this net termination payable secure the clearing member's obligations in favor of ICE Trust and as such will be paid directly to ICE Trust. Conversely, where the client has a net termination claim against the clearing member, the client may net the amount owed to the client against amounts owed by the client in respect of a non-cleared position.

[36] 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

extending the exemption granted in that Order until March 7, 2010.

In the March ICE Trust order, the Commission recognized the need to ensure the prompt establishment of ICE Trust as a CCP for CDS transactions. The Commission also recognized the need to ensure that important elements of Section 17A of the Exchange Act, which sets forth the framework for the regulation and operation of the U.S. clearance and settlement system for securities, apply to the non-excluded CDS market. Accordingly, the temporary exemption in the March ICE Trust Order was subject to a number of conditions designed to enable Commission staff to monitor ICE Trust's clearance and settlement of CDS transactions.[37] Moreover, the temporary exemption in that order in part was based on ICE Trust's representation that it met the standards set forth in the Committee on Payment and Settlement Systems (''CPSS'') and IOSCO report entitled: *Recommendation for Central Counterparties* (''RCCP'').[38] The RCCP establishes a framework that requires a CCP to have (i) The ability to facilitate the prompt and accurate clearance and settlement of CDS transactions and to safeguard its users' assets; and (ii) sound risk management, including the ability to appropriately determine and collect clearing funds and monitor its users' trading. This framework is generally consistent with the requirements of Section 17A of the Exchange Act.

The Commission believes that continuing to facilitate the central clearing of CDS transactions—including customer CDS transactions—through a temporary conditional exemption from Section 17A would provide important risk management and systemic benefits by avoiding an interruption in those CCP clearance and settlement services. Any interruption in CCP clearance and settlement services for CDS transactions would eliminate in the future the benefits ICE Trust provides to the non-excluded CDS market during the exemptive period. Accordingly, and consistent with our findings in the March ICE Trust Order, we find pursuant to Section 36 of the Exchange Act that it is necessary and appropriate in the public interest and is consistent with the protection of investors for the Commission to extend, until March 7, 2010, the relief provided from the clearing agency registration requirements of Section 17A by the March ICE Trust Order.

Our action today balances the aim of facilitating ICE Trust's continued service as a CCP for non-excluded CDS transactions with ensuring that important elements of Commission oversight are applied to the non-excluded CDS market. The continued use of temporary exemptions will permit the Commission to continue to develop direct experience with the non-excluded CDS market. During the extended exemptive period, the Commission will continue to monitor closely the impact of the CCPs on the CDS market. In particular, the Commission will seek to assure itself that ICE Trust does not act in an anticompetitive manner or indirectly facilitate anticompetitive behavior with respect to fees charged to members, the dissemination of market data, and the access to clearing services by independent CDS exchanges or CDS trading platforms.

This temporary extension of the March ICE Trust Order also is designed to assure that—as represented in the request on behalf of ICE Trust—information will continue to be available to market participants about the terms of the CDS cleared by ICE Trust, the creditworthiness of ICE Trust or any guarantor, and the clearance and settlement process for the CDS.[39] The Commission believes continued operation of ICE Trust consistent with the conditions of this Order will facilitate the availability to market participants of information that should enable them to make better informed investment decisions and better value and evaluate their Cleared CDS and counterparty exposures relative to a market for CDS that is not centrally cleared.

This temporary extension of the March ICE Trust Order is subject to a number of conditions that are designed to enable Commission staff to continue to monitor ICE Trust's clearance and settlement of CDS transactions and help reduce risk in the CDS market. These conditions require that ICE Trust: (i) Make available on its Web site its annual audited financial statements; (ii) preserve records related to the conduct of its Cleared CDS clearance and settlement services for at least five years (in an easily accessible place for the first two years); (iii) provide information relating to its Cleared CDS clearance and settlement services to the Commission and provide access to the Commission to conduct on-site inspections of facilities, records and personnel related to its Cleared CDS clearance and settlement services; (iv) notify the Commission about material disciplinary actions taken against any of its members utilizing its Cleared CDS clearance and settlement services, and about the involuntary termination of the membership of an entity that is utilizing ICE Trust's Cleared CDS clearance and settlement services; (v) provide the Commission with changes to rules, procedures, and any other material events affecting its Cleared CDS clearance and settlement services; (vi) provide the Commission with reports prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements[40] and its annual audited financial statements prepared by independent audit personnel; and (vii) report all significant systems outages to the Commission.

In addition, this temporary extension of the March ICE Trust Order is conditioned on ICE Trust, directly or indirectly, making available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that ICE Trust may establish to calculate mark-to-market margin requirements for ICE Trust clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by ICE Trust. The Commission believes this is an appropriate condition for ICE Trust's temporary continued exemption from registration as a clearing agency.

As a CCP, ICE Trust collects and processes information about CDS transactions, prices, and positions from all of its participants. With this information, a CCP calculates and disseminates current values for open positions for the purpose of setting

[37] *See* Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009).

[38] The RCCP was drafted by a joint task force (''Task Force'') composed of representative members of IOSCO and CPSS and published in November 2004. The Task Force consisted of securities regulators and central bankers from 19 countries and the European Union. The U.S. representatives on the Task Force included staff from the Commission, the Federal Reserve Board, and the Commodity Futures Trading Commission.

[39] The Commission believes that it is important in the CDS market, as in the market for securities generally, that parties to transactions should have access to financial information that would allow them to evaluate appropriately the risks relating to a particular investment and make more informed investment decisions. *See generally* Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets, March 13, 2008, available at: *http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf.*

[40] *See* Automated Systems of Self-Regulatory Organization, Exchange Act Release No. 27445 (November 16, 1989), File No. S7–29–89, and Automated Systems of Self-Regulatory Organization (II), Exchange Act Release No. 29185 (May 9, 1991), File No. S7–12–91.

appropriate margin levels. The availability of such information can improve fairness, efficiency, and competitiveness of the market—all of which enhance investor protection and facilitate capital formation. Moreover, with pricing and valuation information relating to Cleared CDS, market participants would be able to derive information about underlying securities and indexes. This may improve the efficiency and effectiveness of the securities markets by allowing investors to better understand credit conditions generally.

C. Extended Temporary Conditional Exemption From Exchange Registration Requirements

When we initially provided exemptions in connection with CDS clearing by ICE Trust, we granted a temporary conditional exemption to ICE Trust from the requirements of Sections 5 and 6 of the Exchange Act, and the rules and regulations thereunder, in connection with ICE Trust's calculation of mark-to-market prices for open positions in Cleared CDS. We also temporarily exempted ICE Trust participants from the prohibitions of Section 5 to the extent that they use ICE Trust to effect or report any transaction in Cleared CDS in connection with ICE Trust's calculation of mark-to-market prices for open positions in Cleared CDS. Section 5 of the Exchange Act contains certain restrictions relating to the registration of national securities exchanges,[41] while Section 6 provides the procedures for registering as a national securities exchange.[42]

We granted these temporary exemptions to facilitate the establishment of ICE Trust's end-of-day settlement price process. ICE Trust had represented that in connection with its clearing and risk management process it would calculate an end-of-day settlement price for each Cleared CDS in which an ICE Trust participant has a cleared position, based on prices submitted by the participants. ICE Trust stated that as part of this mark-to-market process, it periodically would require participants to execute certain CDS trades at the applicable end-of-day settlement price, to help ensure that the prices that the participants submit reflect their assessment of the value of each open position in Cleared CDS, thereby reducing risk by helping ICE Trust to impose appropriate margin requirements.

As part of its current request, ICE Trust has stated that since it has commenced clearing operations for Cleared CDS, it has periodically required ICE Trust clearing members to execute certain CDS trades at the applicable end-of-day settlement price. ICE Trust further represents that it wishes to continue periodically requiring clearing members to execute certain CDS trades in this manner.

As discussed above, we have found in general that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to facilitate continued CDS clearing by ICE Trust. Consistent with that finding—and in reliance on ICE Trust's representation that the end-of-day settlement pricing process, including the periodically required trading, is integral to its risk management—we further find that it is necessary or appropriate in the public interest, and is consistent with the protection of investors that we exercise our authority under Section 36 of the Exchange Act to extend, until March 7, 2010, ICE Trust's temporary exemption from Sections 5 and 6 of the Exchange Act in connection with its calculation of mark-to-market prices for open positions in Cleared CDS, and ICE Trust clearing members' temporary exemption from Section 5 with respect to such trading activity.[43]

The temporary exemption for ICE Trust will continue to be subject to three conditions. First, ICE Trust must report the following information with respect to its calculation of mark-to-market prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports during the life of the enterprise and of any successor enterprise:

- The total dollar volume of transactions executed during the quarter, broken down by reference entity, security, or index; and
- The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index.

Reporting of this information will assist the Commission in carrying out its responsibility to supervise and regulate the securities markets.

Second, ICE Trust must establish and maintain adequate safeguards and procedures to protect participants' confidential trading information. Such safeguards and procedures shall include: (a) Limiting access to the confidential trading information of participants to those employees of ICE Trust who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and (b) establishing and maintaining standards controlling employees of ICE Trust trading for their own accounts. ICE Trust must establish and maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed. This condition is designed to prevent any misuse of ICE Trust clearing member trading information that may be available to ICE Trust in connection with the daily marking-to-market process of open positions in Cleared CDS. This should strengthen confidence in ICE Trust as a CCP for CDS, thus promoting participation in central clearing of CDS.

Third, ICE Trust must comply with the conditions to the temporary exemption from Section 17A of the Exchange Act in this Order, given that this exemption is granted in the context of our goal of continuing to facilitate ICE Trust's ability to act as a CCP for non-excluded CDS, and given ICE Trust's representation that the end-of-day settlement pricing process, including the periodically required trading, is integral to its risk management.

D. Modified and Extended Temporary Conditional General Exemption for ICE Trust and Certain Eligible Contract Participants

As we recognized when we initially provided temporary exemptions in connection with CDS clearing by ICE Trust, applying the full panoply of Exchange Act requirements to participants in transactions in non-excluded CDS likely would deter some participants from using CCPs to clear CDS transactions. We also recognized that it is important that the antifraud provisions of the Exchange Act apply to transactions in non-excluded CDS, particularly given that OTC transactions subject to individual negotiation that qualify as security-based swap

[41] In particular, Section 5 states:

It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange * * * to effect any transaction in a security, or to report any such transactions, unless such exchange (1) is registered as a national securities exchange under section 6 of [the Exchange Act], or (2) is exempted from such registration * * * by reason of the limited volume of transactions effected on such exchange * * *.

15 U.S.C. 78e.

[42] 15 U.S.C. 78f. Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

[43] We are making a technical modification to this exemption so it refers to ICE Trust's clearing members rather than ''ICE Trust Participants.'' The latter defined term was used in our earlier Order consistent with the scope of that Order, and the term no longer is necessary given the expansion of our exemptive relief to accommodate customer clearing by ICE Trust. *See* note 46, *infra*.

agreements already are subject to those provisions.[44]

As a result, we concluded that it is appropriate in the public interest and consistent with the protection of investors temporarily to apply substantially the same framework to transactions by market participants in non-excluded CDS that applies to transactions in security-based swap agreements. Consistent with that conclusion, we temporarily exempted ICE Trust, and certain members and eligible contract participants from a number of Exchange Act requirements, while excluding certain enforcement-related and other provisions from the scope of the exemption.

We believe that continuing to facilitate the central clearing of CDS transactions by ICE Trust through this type of temporary exemption will provide important risk management benefits and systemic benefits. We also believe that facilitating the central clearing of customer CDS transactions, subject to the conditions in this Order, will provide an opportunity for the customers of ICE Trust clearing members to control counterparty risk.

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant an exemption until March 7, 2010 from certain requirements under the Exchange Act. To account for the additional relief we are granting in connection with customer CDS clearing by ICE Trust, we are modifying the parameters of the relief we previously granted.

As revised, this temporary exemption applies to ICE Trust and to any eligible contract participants[45]—including any ICE Trust clearing member[46]—other than: Eligible contract participants that are self-regulatory organizations; or eligible contract participants that are registered brokers or dealers.[47]

As before, under this temporary exemption, and solely with respect to Cleared CDS, those persons generally are exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. Thus, those persons would still be subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements.[48] In addition, all provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions would remain applicable.[49] In this way, the temporary exemption would apply the same Exchange Act requirements in connection with non-excluded CDS as apply in connection with OTC credit default swaps.

In light of the temporary conditional exemption—discussed below—that we are granting from certain Exchange Act requirements related to broker-dealers, we are modifying this temporary exemption by excluding from its scope the broker-dealer registration requirements of Section 15(a)(1),[50] and the other requirements of the Exchange Act, including paragraphs (4) and (6) of Section 15(b),[51] and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission.

Consistent with our earlier exemptions, and for the same reasons, this temporary exemption also does not extend to: the exchange registration requirements of Exchange Act Sections 5 and 6;[52] the clearing agency registration requirements of Exchange Act Section 17A; the requirements of Exchange Act Sections 12, 13, 14, 15(d), and 16;[53] or certain provisions related to government securities.[54]

To take advantage of this temporary exemption from Exchange Act requirements, moreover, ICE Trust clearing members must be in material compliance with ICE Trust rules. Also, to help promote compliance with the exemption—discussed below—that we are granting from certain Exchange Act requirements specifically related to broker-dealers, this more general Exchange Act exemption is conditioned on any ICE Trust clearing member that participates in the clearing of Cleared CDS transactions on behalf of other persons annually providing a certification to ICE Trust that attests to whether the clearing member is relying on the temporary exemption from broker-dealer related requirements described below.[55]

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[44] While Section 3A of the Exchange Act excludes ''swap agreements'' from the definition of ''security,'' certain antifraud and insider trading provisions under the Exchange Act explicitly apply to security-based swap agreements. *See* (a) paragraphs (2) through (5) of Section 9(a), 15 U.S.C. 78i(a), prohibiting the manipulation of security prices; (b) Section 10(b), 15 U.S.C. 78j(b), and underlying rules prohibiting fraud, manipulation or insider trading (but not prophylactic reporting or recordkeeping requirements); (c) Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices; (d) Sections 16(a) and (b), 15 U.S.C. 78p(a) and (b), which address disclosure by directors, officers and principal stockholders, and short-swing trading by those persons, and rules with respect to reporting requirements under Section 16(a); (e) Section 20(d), 15 U.S.C. 78t(d), providing for antifraud liability in connection with certain derivative transactions; and (f) Section 21A(a)(1), 15 U.S.C. 78u–1(a)(1), related to the Commission's authority to impose civil penalties for insider trading violations.

''Security-based swap agreement'' is defined in Section 206B of the Gramm-Leach-Bliley Act as a swap agreement in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

[45] This exemption in general applies to eligible contract participants, as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order, other than persons that are eligible contract participants under paragraph (C) of that section.

[46] The prior exemption specifically applied to any ''ICE Trust Participant,'' which was defined to exclude those members that submitted customer CDS trades for clearing. In light of our expansion of the ICE Trust relief to accommodate customer clearing, we no longer are limiting the exemption in that way, and are not using the ''ICE Trust Participant'' definition.

[47] A separate temporary exemption addresses the Cleared CDS activities of registered broker-dealers. *See* Part II.F, *infra.* Solely for purposes of this Order, a registered broker-dealer, or a broker or dealer registered under Section 15(b) of the Exchange Act, does not refer to someone that would otherwise be required to register as a broker or dealer solely as a result of activities in Cleared CDS in compliance with this Order.

[48] *See* note 44, *supra.*

[49] Thus, for example, the Commission retains the ability to investigate potential violations and bring enforcement actions in the federal courts as well as in administrative proceedings, and to seek the full panoply of remedies available in such cases.

[50] 15 U.S.C. 78o(a)(1).

[51] Exchange Act Sections 15(b)(4) and 15(b)(6), 15 U.S.C. 78o(b)(4) and (b)(6), grant the Commission authority to take action against broker-dealers and associated persons in certain situations.

[52] These are subject to a separate temporary class exemption. *See* note 1, *supra.* A national securities exchange that effects transactions in Cleared CDS would continue to be required to comply with all requirements under the Exchange Act applicable to such transactions. A national securities exchange could form subsidiaries or affiliates that operate exchanges exempt under that order. Any subsidiary or affiliate of a registered exchange could not integrate, or otherwise link, the exempt CDS exchange with the registered exchange including the premises or property of such exchange for effecting or reporting a transaction without being considered a ''facility of the exchange.'' *See* Section 3(a)(2), 15 U.S.C. 78c(a)(2).

This Order also includes a separate temporary exemption from Sections 5 and 6 in connection with the mark-to-market process of ICE Trust, discussed above, at note 41 and accompanying text.

[53] 15 U.S.C. 78*l,* 78m, 78n, 78o(d), 78p. Eligible contract participants and other persons instead should refer to the interim final temporary rules issued by the Commission. *See* note 1, *supra.*

[54] This exemption specifically does not extend to the Exchange Act provisions applicable to government securities, as set forth in Section 15C, 15 U.S.C. 78o–5, and its underlying rules and regulations; nor does the exemption extend to related definitions found at paragraphs (42) through (45) of Section 3(a), 15 U.S.C. 78c(a). The Commission does not have authority under Section 36 to issue exemptions in connection with those provisions. *See* Exchange Act Section 36(b), 15 U.S.C. 78mm(b).

[55] This condition requiring clearing members to convey information to ICE Trust as a repository for regulators, and other conditions of this Order that require clearing members or others to convey

Continued

E. Conditional Temporary Exemption from Broker-Dealer Related Requirements for Certain Clearing Members of ICE Trust and Others

The March ICE Trust Order did not address clearing of customer transactions by ICE Trust, and that order thus did not provide ICE Trust clearing members that hold customer collateral in connection with cleared CDS transactions with an exemption from broker-dealer requirements under the Exchange Act. Absent an exception or exemption, persons that effect transactions in non-excluded CDS that are securities may be required to register as broker-dealers pursuant to Section 15(a)(1) of the Exchange Act.[56] Moreover, certain other requirements of the Exchange Act could apply to such persons, as broker-dealers, regardless of whether they are registered with the Commission.

It is consistent with our investor protection mandate to require securities intermediaries that receive or hold funds and securities on behalf of others to comply with standards that safeguard the interests of their customers. For example, a registered broker-dealer is required to segregate assets held on behalf of customers from proprietary assets because segregation will assist customers in recovering assets in the event the broker-dealer fails. To the extent that funds and securities are not segregated, they could be used by an intermediary to fund its own business and could be attached to satisfy debts of the intermediary if it were to fail.[57] Moreover, the maintenance of adequate capital and liquidity protects customers, CCPs and other market participants. Adequate books and records (including both transactional and position records) are necessary to facilitate day to day operations as well as to help resolve situations in which an intermediary fails and either a regulatory authority or receiver is forced to liquidate the firm. Appropriate records also are necessary to allow examiners to review for improper activities, such as insider trading or fraud.

At the same time, requiring intermediaries that receive or hold funds and securities on behalf of customers in connection with transactions in non-excluded CDS to register as broker-dealers may deter the use of CCPs in customer CDS transactions, which would cause customers to lose the counterparty risk benefits of central clearing, and would lessen the systemic risk reduction benefits associated with central clearing.

Those factors argue in favor of flexibility in applying the requirements of the Exchange Act to these intermediaries, conditioned on requiring the intermediaries to take reasonable steps to help increase the likelihood that their customers would be protected in the event the intermediary became insolvent, even if those safeguards are as not as strong as those required of registered broker-dealers. This requires us to balance the goals of promoting the central clearing of customer CDS transactions against the goal of protecting customers, and to be mindful that these conditions cannot provide legal certainty that customer collateral in fact would be protected in the event an ICE Trust clearing member were to become insolvent.

In granting the temporary exemption, we also are relying on ICE Trust's representation that before offering the Non-Member Framework, it will adopt a requirement that non-U.S. clearing members subject to the framework are regulated by: (i) A signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, or (ii) a signatory to a bilateral arrangement with the Commission for enforcement cooperation.[58]

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant a conditional exemption until March 7, 2010, with respect to certain Exchange Act requirements related to broker-dealers. This exemption is available to ICE Trust clearing members other than registered broker-dealers. This exemption also is available to any eligible contract participant, other than a registered broker-dealer, that does not receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons.[59] Solely with respect to Cleared CDS, those persons temporarily will be exempt from the broker-dealer registration requirements of Section 15(a)(1), and the other requirements of the Exchange Act (other than paragraphs (4) and (6) of Section 15(b)) [60] and the

information (*e.g.,* an audit report related to the clearing member's compliance with exemptive conditions) to ICE Trust, does not impose upon ICE Trust any independent duty to audit or otherwise review that information. These conditions also do not impose on ICE Trust any independent fiduciary or other obligation to any customer of a clearing member.

[56] Section 15(a)(1) generally provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission.

Section 3(a)(4) of the Exchange Act generally defines a ''broker'' as ''any person engaged in the business of effecting transactions in securities for the account of others,'' but excludes certain bank securities activities. 15 U.S.C. 78c(a)(4). Section 3(a)(5) of the Exchange Act generally defines a ''dealer'' as ''any person engaged in the business of buying and selling securities for his own account,'' but includes exceptions for certain bank activities. 15 U.S.C. 78c(a)(5). Exchange Act Section 3(a)(6) defines a ''bank'' as a bank or savings association that is directly supervised and examined by state or federal banking authorities (with certain additional requirements for banks and savings associations that are not chartered by a federal authority or a member of the Federal Reserve System). 15 U.S.C. 78c(a)(6).

[57] In the context of the December 15 commitment for customer CDS clearing, an ISDA buy-side/sell-side committee issued a report extensively analyzing the legal issues associated with segregating the collateral that customers post with members. *See* Distilled Report (Jul. 13, 2009) (*http://www.newyorkfed.org/markets/Distilled_Report.pdf*); Full Report (Jun. 30, 2009) (*http://www.newyorkfed.org/markets/Full_Report.pdf*); *see also* Press Release, ''New York Fed Welcomes CDS Central Counterparty Legal Analysis'' (Jul. 13, 2009) (*http://www.newyorkfed.org/newsevents/news/markets/2009/an090713.html*) (''Segregation and portability are key elements in building robust central counterparties. We requested the analysis because market participants were not making enough progress to analyze and address these buy-side issues. This is a good first step and, as we move the OTC derivatives market to central clearing, we will work to strengthen the regulatory and legal environment for buy-side clearing,' said William C. Dudley, president of the New York Fed.'').

[58] Non-U.S. clearing members that do not meet these criteria would not be eligible to rely on this exemption.

[59] In some circumstances, an eligible contract participant that does not hold customer funds or securities nonetheless may act as a dealer in securities transactions, or as a broker (such as an inter-dealer broker).

Solely for purposes of this requirement, an eligible contract participant would not be viewed as receiving or holding funds or securities for purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons, if the other persons involved in the transaction would not be considered ''customers'' of the eligible contract participant under the analysis used for determining whether certain persons would be considered ''customers'' of a broker-dealer under Exchange Act Rule 15c3–3(a)(1). For these purposes, and for the purpose of the definition of ''Cleared CDS,'' the terms ''purchasing'' and ''selling'' mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing the rights or obligations under, a Cleared CDS, as the context may require. This is consistent with the meaning of the terms ''purchase'' or ''sale'' under the Exchange Act in the context of security-based swap agreements. *See* Exchange Act Section 3A(b)(4).

[60] As noted above, *see* note 51, *supra,* Exchange Act Sections 15(b)(4) and 15(b)(6) grant the Commission authority to take action against broker-dealers and associated persons in certain situations. Accordingly, while this exemption from broker-dealer requirements generally extends to persons that act as broker-dealers in the market for Cleared CDS (potentially including inter-dealer brokers that do not hold funds or securities for others), such persons may be subject to actions under Sections 15(b)(4) and (b)(6) of the Exchange Act.

rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission.

For all ICE Trust clearing members—regardless of whether they receive or hold customer collateral in connection with Cleared CDS—this temporary exemption is conditioned on the clearing member being in material compliance with ICE Trust's rules, as well as on the clearing member being in compliance with applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS.

For ICE Trust clearing members that receive or hold funds or securities of U.S. persons (or who receive or hold funds or securities of any person in the case of a U.S. clearing member)—other than for an affiliate that controls, is controlled by, or is under common control with the clearing member—in connection with Cleared CDS, this temporary exemption further is conditioned on the customer not being a natural person, and on the clearing member providing certain risk disclosures to the customer.[61]

Also, those clearing members that receive or hold such customer funds or securities must transfer those funds and securities, as promptly as practicable after receipt, to either the Custodial Client Omnibus Margin Account at ICE Trust [62] or an account held by a third-party custodian, as described below.

Collateral that is held at a third-party custodian, moreover, must either be held: (1) In the name of the customer, subject to an agreement in which the customer, the clearing member and the custodian are parties, acknowledging that the assets held therein are customer assets used to collateralize obligations of the customer to the clearing member, and that the assets held in the account may not otherwise be pledged or rehypothecated by the clearing member or the custodian; or (2) in an omnibus account for which the clearing member maintains daily records as to the amount owing to each customer, and which is subject to an agreement between the clearing member and the custodian specifying: (i) That all account assets are held for the exclusive benefit of the clearing member's customers and are being kept separate from any other accounts that the clearing member maintains with the custodian; (ii) that the account assets may not be used as security for a loan to the clearing member by the custodian, and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the custodian or any person claiming through the custodian; and (iii) that the assets may not otherwise be pledged or rehypothecated by the clearing member or the custodian.[63] Under either approach, the third-party custodian cannot be affiliated with the clearing member.[64] Moreover, if the third-party custodian is a U.S. entity, it must be a bank (as that term is defined in Section 3(a)(6) of the Exchange Act), have total regulatory capital of at least $1 billion,[65] and have been approved to engage in a trust business by an appropriate regulatory agency. A custodian that is not a U.S. entity must have regulatory capital of at least $1 billion,[66] and must provide the clearing member, the customer and ICE Trust with a legal opinion providing that the account assets are subject to regulatory requirements in the custodian's home jurisdiction designed to protect, and provide for the prompt return of, custodial assets in the event of the custodian's insolvency, and that the assets held in that account reasonably could be expected to be legally separate from the clearing member's assets in the event of the clearing member's insolvency. Also, cash collateral posted with the third-party custodian may be invested in other assets, consistent with the investment policies that govern collateral held at ICE Trust.[67] Finally, a clearing member that uses a third-party custodian to hold customer collateral must notify ICE Trust of that use.

To the extent there is any delay in the clearing member transferring such funds and securities to ICE Trust or a third-party custodian,[68] the clearing member must effectively segregate the collateral in a way that, pursuant to applicable law, could reasonably be expected to effectively protect the collateral from the clearing member's creditors. The clearing member may not permit customers to ''opt out'' of such segregation even if applicable regulations or laws otherwise would permit such ''opt out.''

To facilitate compliance with the segregation practices that are required as a condition to this temporary exemption, the clearing member also must annually provide ICE Trust with a self-assessment that it is in compliance with the requirements, along with a report by the clearing member's independent third-party auditor that attests to that assessment. The report must be dated the same date as the clearing member's annual audit report (but may be separate from it), and must be produced in accordance with the standards that the auditor follows in auditing the clearing member's financial statements.

Finally, to support these segregation practices and enhance the ability to detect and deter circumstances in which clearing members fail to segregate customer collateral consistent with the exemption, this temporary exemption is conditioned on the clearing member

In addition, such persons may be subject to actions under Exchange Act Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices. As noted above, Section 15(c)(1) explicitly applies to security-based swap agreements. Sections 15(b)(4), 15(b)(6) and 15(c)(1), of course, would not apply to persons subject to this exemption who do not act as broker-dealers or associated persons of broker-dealers.

[61] The clearing member must disclose that it is not regulated by the Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply, that the insolvency law of the applicable jurisdiction may affect the customer's ability to recover funds and securities or the speed of any such recovery, and (if applicable) that non-U.S. members may be subject to an insolvency regime that is materially different from that applicable to U.S. persons.

[62] Cash collateral transferred to ICE Trust may be invested in ''Eligible Custodial Assets,'' as defined in ICE Trust's ''Custodial Asset Policies.'' *See* note 26 *supra* and accompanying text. Also, collateral transferred to ICE Trust may be held at a subcustodian.

[63] We do not contemplate that either of these approaches involving the use of a third-party custodian would interfere with the ability of a clearing member and its customer to agree as to how any return or losses earned on those assets would be distributed between the clearing member and its customer.

Also, the restriction in both approaches on the clearing member's and the custodian's ability to rehypothecate these customer funds and securities does not preclude that collateral from being transferred to ICE Trust as necessary to satisfy variation margin requirements in connection with the customer's CDS position.

[64] For purposes of the Order, an ''affiliated person'' of a clearing member mean any person who directly or indirectly controls a clearing member or any person who is directly or indirectly controlled by or under common control with a clearing member; ownership of 10 percent or more of an entity's common stock will be deemed *prima facie* control of that entity. This standard is analogous to the standard used to identify affiliated persons of broker-dealers under Exchange Act Rule 15c3–3(a)(13), 17 CFR 240.15c3–3(a)(13).

[65] In particular, custodians that are U.S. entities must have total capital, as calculated to meet the applicable requirements imposed by the entity's appropriate regulatory agency, of at least $1 billion. The term ''appropriate regulatory agency'' is defined in Section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34)).

[66] Custodians that are non-U.S. entities, particularly must have total capital, as calculated to meet the applicable requirements imposed by the foreign financial regulatory authority of at least $1 billion. The term ''foreign financial regulatory authority'' is defined in Section 3(a)(52) of the Exchange Act, 15 U.S.C. 78c(a)(52)).

[67] *See* note 26, *supra.*

[68] This provision is intended to address short-term technology or operational issues. ICE Trust rules require collateral to be transferred promptly on receipt, with the expectation that margin would be transferred on the same business day.

agreeing to provide the Commission with access to information related to Cleared CDS transactions.[69] In particular, the clearing member would provide the Commission (upon request and subject to agreements reached between the Commission or the U.S. Government and an appropriate foreign securities authority[70]) with information or documents within the clearing member's possession, custody, or control, as well as testimony of clearing member personnel and assistance in taking the evidence of other persons, that relates to Cleared CDS transactions. If, after the clearing member has exercised its best efforts to provide this information (including requesting the appropriate governmental body and, if legally necessary, its customers), the clearing member nonetheless is prohibited from providing the information by applicable foreign law or regulations, this temporary exemption shall not longer be available to the clearing member.[71]

We recognize that requiring clearing members that receive or hold customer collateral to satisfy these conditions will not guarantee that a customer would receive the return of its collateral in the event of a clearing member's insolvency, particularly in light of the fact-specific nature of the insolvency process and the multiplicity of insolvency regimes that may apply to ICE Trust's members clearing for U.S. customers. We believe, however, that these are reasonable steps for increasing the likelihood that customers would be able to access collateral in such an insolvency event. We also recognize that these customers generally may be expected to be sophisticated market participants that should be able to weigh the risks associated with entering into arrangements with intermediaries that are not registered broker-dealers, particularly in light of the disclosure required as a condition to this temporary exemption.

F. Extended Temporary General Exemption for Certain Registered Broker-Dealers

When we initially provided exemptions in connection with CDS clearing by ICE Trust, we granted limited exemptions from Exchange Act requirements to registered broker-dealers in connection with their activities involving Cleared CDS. In crafting these temporary exemptions, we balanced the need to avoid creating disincentives to the prompt use of CCPs against the critical role that certain broker-dealers play in promoting market integrity and protecting customers (including broker-dealer customers that are not involved with CDS transactions).

In light of the risk management and systemic benefits in continuing to facilitate CDS clearing by ICE Trust through targeted exemptions to registered broker-dealers, the Commission finds pursuant to Section 36 of the Exchange Act that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to extend this temporary registered broker-dealer exemption from certain Exchange Act requirements until March 7, 2010.[72]

Consistent with the temporary exemptions discussed above, and solely with respect to Cleared CDS, we are temporarily exempting registered broker-dealers from provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. As discussed above, we are not excluding registered broker-dealers from Exchange Act provisions that explicitly apply in connection with security-based swap agreements or from related enforcement authority provisions.[73] As above, and for similar reasons, we are not exempting registered broker-dealers from: Sections 5, 6, 12(a) and (g), 13, 14, 15(b)(4), 15(b)(6), 15(d), 16 and 17A of the Exchange Act.[74]

Further we are not exempting registered broker-dealers from the following additional provisions under the Exchange Act: (1) Section 7(c),[75] regarding the unlawful extension of credit by broker-dealers; (2) Section 15(c)(3),[76] regarding the use of unlawful or manipulative devices by broker-dealers; (3) Section 17(a),[77] regarding broker-dealer obligations to make, keep and furnish information; (4) Section 17(b),[78] regarding broker-dealer records subject to examination; (5) Regulation T,[79] a Federal Reserve Board regulation regarding extension of credit by broker-dealers; (6) Exchange Act Rule 15c3–1, regarding broker-dealer net capital; (7) Exchange Act Rule 15c3–3, regarding broker-dealer reserves and custody of securities; (8) Exchange Act Rules 17a–3 through 17a–5, regarding records to be made and preserved by broker-dealers and reports to be made by broker-dealers; and (9) Exchange Act Rule 17a–13, regarding quarterly security counts to be made by certain exchange members and broker-dealers.[80] Registered broker-dealers must comply with these provisions in connection with their activities involving non-excluded CDS because these provisions are especially important to helping protect customer funds and securities, ensure proper credit practices and safeguard against fraud and abuse.[81]

G. Solicitation of Comments

When we granted our initial exemptions relief in connection with CDS clearing by ICE Trust, we solicited comment on all aspects of the exemptions, and specifically requested

[69] This requirement for clearing members to make information available to the Commission is consistent with a requirement in Exchange Act Rule 15a–6, which exempts certain foreign broker-dealers from registering with the Commission. *See* Exchange Act Rule 15a–6(a)(3)(i)(B).

[70] The term ''foreign securities authority'' is defined in Section 3(a)(50) of the Exchange Act, 15 U.S.C. 78c(a)(50).

[71] Consistent with the discussion above as to the loss of an exemption due to an underlying representation no longer being accurate, *see* note 8, *supra,* if a clearing member were to lose the benefit of this exemption due to the failure to provide information to the Commission as the result of a prohibition by an applicable foreign law or regulation, the legal status of existing open positions in non-excluded CDS associated with those clearing members and its customers would remain unchanged, but the clearing member could not establish new CDS positions pursuant to the exemption.

[72] The temporary exemptions addressed above—with regard to ICE Trust, certain clearing members and certain eligible contract participants—are not available to persons that are registered as broker-dealers with the Commission (other than those that are notice registered pursuant to Exchange Act Section 15(b)(11)). Exchange Act Section 15(b)(11) provides for notice registration of certain persons that effect transactions in security futures products. 15 U.S.C. 78o(b)(11).

[73] *See* notes 44 and 49, *supra.* As noted above, broker-dealers also would be subject to Section 15(c)(1) of the Exchange Act, which prohibits brokers and dealers from using manipulative or deceptive devices, because that provision explicitly applies in connection with security-based swap agreements. In addition, to the extent the Exchange Act and any rule or regulation thereunder imposes any other requirement on a broker-dealer with respect to security-based swap agreements (e.g., requirements under Rule 17h–1T to maintain and preserve written policies, procedures, or systems concerning the broker or dealer's trading positions and risks, such as policies relating to restrictions or limitations on trading financial instruments or products), these requirements would continue to apply to broker-dealers' activities with respect to Cleared CDS.

[74] We also are not exempting those members from provisions related to government securities, as discussed above.

[75] 15 U.S.C. 78g(c).

[76] 15 U.S.C. 78o(c)(3).

[77] 15 U.S.C. 78q(a).

[78] 15 U.S.C. 78q(b).

[79] 12 CFR 220.1 *et seq.*

[80] Solely for purposes of this temporary exemption, in addition to the general requirements under the referenced Exchange Act sections, registered broker-dealers shall only be subject to the enumerated rules under the referenced Exchange Act sections.

[81] Indeed, Congress directed the Commission to promulgate broker-dealer financial responsibility rules, including rules relating to custody, the use of customer securities, the use of customers' deposits or credit balances, and the establishment of minimum financial requirements.

comment as to the duration of the temporary exemptions, the appropriateness of the exemptive conditions, and whether ICE Trust should be required to register as a clearing agency under the Exchange Act. We received no comments in response to this request.

In connection with this Order extending the exemptions granted in connection with CDS clearing by ICE Trust, and expanding that relief to accommodate central clearing of customer CDS transactions, we reiterate our request for comments on all aspects of the exemptions. We particularly request comments as to the relief we are granting in connection with customer clearing, including whether ICE Trust members that clear customer CDS transactions should be required to register as broker-dealers, whether the conditions that we have placed on the relief adequately protect customer funds and securities from the threat posed by clearing member insolvency, whether additional conditions or requirements are appropriate to promote compliance with the requirements of the exemptions, and what, if any, additional conditions would be appropriate. We also particularly request comment on whether additional conditions, such as a segregation requirement, are necessary to protect customers' mark-to-market profits associated with Cleared CDS transactions that are held at clearing members; in that regard, commenters particularly are invited to discuss whether, in practice, there are impediments to customers receiving such mark-to-market profits from their clearing members promptly after they are earned.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–05–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov/*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–05–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

III. Conclusion

It is hereby ordered, pursuant to Section 36(a) of the Exchange Act, that, until March 7, 2010:

(a) Exemption from Section 17A of the Exchange Act.

ICE Trust U.S. LLC (''ICE Trust'') shall be exempt from Section 17A of the Exchange Act solely to perform the functions of a clearing agency for Cleared CDS (as defined in paragraph (f)(1) of this Order), subject to the following conditions:

(1) ICE Trust shall make available on its Web site its annual audited financial statements.

(2) ICE Trust shall keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it relating to its Cleared CDS clearance and settlement services. These records shall be kept for at least five years and for the first two years shall be held in an easily accessible place.

(3) ICE Trust shall supply information and periodic reports relating to its Cleared CDS clearance and settlement services as may be reasonably requested by the Commission, and shall provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to ICE Trust's Cleared CDS clearance and settlement services.

(4) ICE Trust shall notify the Commission, on a monthly basis, of any material disciplinary actions taken against any of its members utilizing its Cleared CDS clearance and settlement services, including the denial of services, fines, or penalties. ICE Trust shall notify the Commission promptly when ICE Trust involuntarily terminates the membership of an entity that is utilizing ICE Trust's Cleared CDS clearance and settlement services. Both notifications shall describe the facts and circumstances that led to ICE Trust's disciplinary action.

(5) ICE Trust shall notify the Commission of all changes to rules, procedures, and any other material events affecting its Cleared CDS clearance and settlement services, including its fee schedule and changes to risk management practices, the day before effectiveness or implementation of such rule changes or, in exigent circumstances, as promptly as reasonably practicable under the circumstances. All such rule changes will be posted on ICE Trust's Web site. Such notifications will not be deemed rule filings that require Commission approval.

(6) ICE Trust shall provide the Commission with reports prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements. ICE Trust shall provide the Commission (beginning in its first year of operation) with its annual audited financial statements prepared by independent audit personnel.

(7) ICE Trust shall report all significant systems outages to the Commission. If it appears that the outage may extend for 30 minutes or longer, ICE Trust shall report the systems outage immediately. If it appears that the outage will be resolved in less than 30 minutes, ICE Trust shall report the systems outage within a reasonable time after the outage has been resolved.

(8) ICE Trust, directly or indirectly, shall make available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) all end-of-day settlement prices and any other prices with respect to Cleared CDS that ICE Trust may establish to calculate mark-to-market margin requirements for ICE Trust clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by ICE Trust.

(b) Exemption from Sections 5 and 6 of the Exchange Act

(1) ICE Trust shall be exempt from the requirements of Sections 5 and 6 of the Exchange Act and the rules and regulations thereunder in connection with its calculation of mark-to-market prices for open positions in Cleared CDS, subject to the following conditions:

(i) ICE Trust shall report the following information with respect to the calculation of mark-to-market prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and

preserve such reports during the life of the enterprise and of any successor enterprise:

(A) The total dollar volume of transactions executed during the quarter, broken down by reference entity, security, or index; and

(B) The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index;

(ii) ICE Trust shall establish and maintain adequate safeguards and procedures to protect clearing members' confidential trading information. Such safeguards and procedures shall include:

(A) Limiting access to the confidential trading information of clearing members to those employees of ICE Trust who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and

(B) establishing and maintaining standards controlling employees of ICE Trust trading for their own accounts. ICE Trust must establish and maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed; and

(iii) ICE Trust shall satisfy the conditions of the temporary exemption from Section 17A of the Exchange Act set forth in paragraphs (a)(1)—(8) of this Order.

(2) Any ICE Trust clearing member shall be exempt from the requirements of Section 5 of the Exchange Act to the extent such ICE Trust clearing member uses any facility of ICE Trust to effect any transaction in Cleared CDS, or to report any such transaction, in connection with ICE Trust's clearance and risk management process for Cleared CDS.

(c) Exemption for ICE Trust, ICE Trust clearing members, and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (c)(2) is available to:

(i) ICE Trust; and

(ii) Any eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), including any ICE Trust clearing member, other than:

(A) An eligible contract participant that is a self-regulatory organization, as that term is defined in Section 3(a)(26) of the Exchange Act; or

(B) a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof).

(2) Scope of exemption.

(i) In general. Subject to the conditions specified in paragraph (c)(3) of this subsection, such persons generally shall, solely with respect to Cleared CDS, be exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply in connection with security-based swap agreements. Accordingly, under this exemption, those persons remain subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements (*i.e.,* paragraphs (2) through (5) of Section 9(a), Section 10(b), Section 15(c)(1), paragraphs (a) and (b) of Section 16, Section 20(d) and Section 21A(a)(1) and the rules thereunder that explicitly are applicable to security-based swap agreements). All provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions also remain applicable.

(ii) Exclusions from exemption. The exemption in paragraph (c)(2)(i), however, does not extend to the following provisions under the Exchange Act:

(A) Paragraphs (42), (43), (44), and (45) of Section 3(a);

(B) Section 5;

(C) Section 6;

(D) Section 12 and the rules and regulations thereunder;

(E) Section 13 and the rules and regulations thereunder;

(F) Section 14 and the rules and regulations thereunder;

(G) The broker-dealer registration requirements of Section 15(a)(1), and the other requirements of the Exchange Act (including paragraphs (4) and (6) of Section 15(b)) and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission;

(H) Section 15(d) and the rules and regulations thereunder;

(I) Section 15C and the rules and regulations thereunder;

(J) Section 16 and the rules and regulations thereunder; and

(K) Section 17A (other than as provided in paragraph (a)).

(3) Conditions for ICE Trust clearing members.

(i) Any ICE Trust clearing member relying on this exemption must be in material compliance with the rules of ICE Trust.

(ii) Any ICE Trust clearing member relying on this exemption that participates in the clearing of Cleared CDS transactions on behalf of other persons must annually provide a certification to ICE Trust that attests to whether the clearing member is relying on the exemption from broker-dealer related requirements set forth in paragraph (d) of this Order.

(d) Exemption from broker-dealer related requirements for ICE Trust clearing members and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (d)(2) is available to:

(i) Any ICE Trust clearing member (other than one that is registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)); and

(ii) Any eligible contract participant that does not receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons (other than one that is registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)).

(2) Scope of exemption. The persons described in paragraph (d)(1) shall, solely with respect to Cleared CDS, be exempt from the broker-dealer registration requirements of Section 15(a)(1) and the other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)) and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission, subject to the conditions set forth in paragraph (d)(3) with respect to ICE Trust clearing members.

(3) Conditions for ICE Trust clearing members.

(i) General condition for ICE Trust clearing members. An ICE Trust clearing member relying on this exemption must be in material compliance with the rules of ICE Trust, and also must be in material compliance with applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS.

(ii) Additional conditions for ICE Trust clearing members that receive or hold customer funds or securities. Any ICE Trust clearing member that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for U.S. persons (or for any person if the clearing member is a U.S. clearing member)—other than for an affiliate that controls, is controlled by, or is under common control with the clearing member—also shall comply with the following conditions with respect to such activities:

(A) The U.S. person (or any person if the clearing member is a U.S. clearing member) for whom the clearing member

receives or holds such funds or securities shall not be natural persons;

(B) The clearing member shall disclose to such U.S. person (or to any such person if the clearing member is a U.S. clearing member) that the clearing member is not regulated by the Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member, that the insolvency law of the applicable jurisdiction may affect such persons' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding, and, if applicable, that non-U.S. clearing members may be subject to an insolvency regime that is materially different from that applicable to U.S. persons;

(C) As promptly as practicable after receipt, the clearing member shall transfer such funds and securities (other than those promptly returned to such other person) to:

(I) The clearing member's Custodial Client Omnibus Margin Account at ICE Trust; or

(II) an account held by a third-party custodian, subject to the following requirements:

(*a*) The funds and securities must be held either:

(*1*) In the name of a customer, subject to an agreement to which the customer, the clearing member and the custodian are parties, acknowledging that the assets held therein are customer assets used to collateralize obligations of the customer to the clearing member, and that the assets held in that account may not otherwise be pledged or rehypothecated by the clearing member or the custodian; or

(*2*) in an omnibus account for which the clearing member maintains a daily record as to the amount held in the account that is owed to each customer, and which is subject to an agreement between the clearing member and the custodian specifying that:

(*i*) all assets in that account are held for the exclusive benefit of the clearing member's customers and are being kept separate from any other accounts maintained by the clearing member with the custodian;

(*ii*) the assets held in that account shall at no time be used directly or indirectly as security for a loan to the clearing member by the custodian and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the custodian or any person claiming through the custodian; and

(*iii*) the assets held in that account may not otherwise be pledged or rehypothecated by the clearing member or the custodian;

(*b*) The custodian may not be an affiliated person of the clearing member (as defined at paragraph (f)(2)); and

(*1*) If the custodian is a U.S. entity, it must be a bank (as that term is defined in section 3(a)(6) of the Exchange Act), have total capital, as calculated to meet the applicable requirements imposed by the entity's appropriate regulatory agency (as defined in section 3(a)(34) of the Exchange Act), of at least $1 billion, and have been approved to engage in a trust business by its appropriate regulatory agency;

(*2*) if the custodian is not a U.S. entity, it must have total capital, as calculated to meet the applicable requirements imposed by the foreign financial regulatory authority (as defined in section 3(a)(52) of the Exchange Act) responsible for setting capital requirements for the entity, equating to at least $1 billion, and provide the clearing member, the customer and ICE Trust with a legal opinion providing that the assets held in the account are subject to regulatory requirements in the custodian's home jurisdiction designed to protect, and provide for the prompt return of, custodial assets in the event of the insolvency of the custodian, and that the assets held in that account reasonably could be expected to be legally separate from the clearing member's assets in the event of the clearing member's insolvency;

(*c*) such funds may be invested in Eligible Custodial Assets as that term is defined in ICE Trust's Custodial Asset Policies; and

(*d*) the clearing member must provide notice to ICE Trust that it is using the third-party custodian to hold customer collateral.

(D) To the extent there is any delay in transferring such funds and securities to the third-parties identified in paragraph (C), the clearing member shall effectively segregate the collateral in a way that, pursuant to applicable law, is reasonably expected to effectively protect such funds and securities from the clearing member's creditors. The clearing member shall not permit such persons to ''opt out'' of such segregation even if regulations or laws otherwise would permit such ''opt out.''

(E) The clearing member annually must provide ICE Trust with

(I) an assessment by the clearing member that it is in compliance with all the provisions of paragraphs (d)(3)(ii)(A) through (D) in connection with such activities, and

(II) a report by the clearing member's independent third-party auditor that attests to, and reports on, the clearing member's assessment described in paragraph (d)(3)(ii)(E)(I) and that is

(*a*) dated as of the same date as, but which may be separate and distinct from, the clearing member's annual audit report;

(*b*) produced in accordance with the auditing standards followed by the independent third party auditor in its audit of the clearing member's financial statements.

(F) The clearing member shall provide the Commission (upon request or pursuant to agreements reached between the Commission or the U.S. Government and any foreign securities authority (as defined in Section 3(a)(50) of the Exchange Act)) with any information or documents within the possession, custody, or control of the clearing member, any testimony of personnel of the clearing member, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to Cleared CDS transactions, except that if, after the clearing member has exercised its best efforts to provide the information, documents, testimony, or assistance, including requesting the appropriate governmental body and, if legally necessary, its customers (with respect to customer information) to permit the clearing member to provide the information, documents, testimony, or assistance to the Commission, the clearing member is prohibited from providing this information, documents, testimony, or assistance by applicable foreign law or regulations, then this exemption shall not longer be available to the clearing member.

(e) Exemption for certain registered broker-dealers.

A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (c)(2), solely with respect to Cleared CDS, except:

(1) Section 7(c);
(2) Section 15(c)(3);
(3) Section 17(a);
(4) Section 17(b);
(5) Regulation T, 12 CFR 200.1 *et seq.;*
(6) Rule 15c3–1;
(7) Rule 15c3–3;
(8) Rule 17a–3;
(9) Rule 17a–4;
(10) Rule 17a–5; and
(11) Rule 17a–13.

(f) Definitions.

(1) For purposes of this Order, the term ''Cleared CDS'' shall mean a credit

default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Trust, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which:

(i) The reference entity, the issuer of the reference security, or the reference security is one of the following:

(A) an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(B) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(C) a foreign sovereign debt security;

(D) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or

(E) an asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae; or

(ii) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (1).

(2) For purposes of this Order, the term ''Affiliated Person of the Clearing Member'' shall mean any person who directly or indirectly controls a clearing member or any person who is directly or indirectly controlled by or under common control with the clearing member. Ownership of 10 percent or more of the common stock of the relevant entity will be deemed *prima facie* control of that entity.

December 4, 2009.

By the Securities and Exchange Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29423 Filed 12–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61104; File No. SR–NYSEArca–2009–106]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Relating to the Listing Fee and Annual Fee Applicable to Derivative Securities Products

December 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 24, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca, through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), is proposing to amend its Schedule of Fees and Charges for Exchange Services (''Fee Schedule'') to revise the Listing Fees and Annual Fees applicable to Derivative Securities Products listed on NYSE Arca, LLC (''NYSE Arca Marketplace''), the equities facility of NYSE Arca Equities. The revised portions of the Fee Schedule are attached to the filing as Exhibit 5. A copy of this filing is available on the Exchange's Web site at *http://www.nyx.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca has determined to amend the Exchange's Schedule of Fees and Changes for Exchange Services to revise the Listing Fee and Annual Fee applicable to Derivative Securities Products (''DSPs'') listed on the NYSE Arca Marketplace.[3] Specifically, the Exchange proposes to increase the Listing Fee for each issue of DSPs, with the exception of Managed Fund Shares listed under NYSE Arca Equities Rule 8.600, and Managed Trust Securities listed under NYSE Arca Equities Rule 8.700, from $5,000 to $7,500. For Managed Fund Shares and Managed Trust Securities, the Listing Fee will be $10,000.

In addition, the Exchange proposes to amend the Annual Fee applicable to DSPs. For DSPs, with the exception of Managed Fund Shares and Managed Trust Securities, the Exchange proposes to increase the Annual Fee to $5,000 for each such issue with fewer than 25 million shares outstanding; $7,500 for each such issue with 25 million to 49,999,999 shares outstanding; and $10,000 for each such issue with 50 million to 99,999,999 shares outstanding. The current Annual Fee for all DSP issues is $2,000 for an issue with less than 25 million shares outstanding; $4,000 for an issue with 25 million to 49,999,999 shares outstanding; and $8,000 for an issue with 50 million to 99,999,999 shares outstanding. For DSP issues, except for Managed Fund Shares and Managed Trust Securities, that have 100 million shares or more outstanding, the Annual Fee will remain unchanged.

For Managed Fund Shares and Managed Trust Securities, the Exchange proposes to impose an Annual Fee for each such issue as follows:

Shares outstanding (each issue)	Annual fee
Less than 25 million	$7,500
25 million up to 49,999,999	10,000
50 million up to 99,999,999	12,500
100 million up to 249,999,999	20,000
250 million up to 499,999,999	30,000
500 million and over	40,000

The Exchange believes that the proposed increases in the Listing Fee and, for certain DSPs, in the Annual Fee, are reasonable and appropriate in view of the increased costs incurred by the Exchange to support the rule making process, listing administration process, issuer services, and consultative legal services provided to issuers in support of new product development as the industry evolves with innovative product lines for investors.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As specified in footnote 3 to the Fee Schedule, for the purposes of the Fee Schedule, the term ''Derivative Securities Products'' includes securities described in NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units); 8.100 (Portfolio Depositary Receipts); 8.200 (Trust Issued Receipts); 8.201 (Commodity-Based Trust Shares); 8.202 (Currency Trust Shares); 8.203 (Commodity Index Trust Shares); 8.204 (Commodity Futures Trust Shares); 8.300 (Partnership Units); 8.500 (Trust Units); 8.600 (Managed Fund Shares), and 8.700 (Managed Trust Securities).

The Exchange believes that a higher Listing Fee and Annual Fee for Managed Fund Shares and Managed Trust Securities, compared to other DSPs, is appropriate in that the Exchange generally expends greater resources to provide services in connection with the listing and administration of such securities than for other DSPs.

The Exchange notes further that the proposed Listing Fee and Annual Fee for DSPs are substantially lower than such fees for listing of common and preferred stock on the Exchange. The Listing Fee for common and preferred stock ranges from $100,000 to $150,000, and the Annual Fee ranges from $30,000 to $85,000.

The Listing Fee and Annual Fee as proposed to be amended will take effect as of January 1, 2010.

2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b)[4] of the Securities Exchange Act of 1934 (the ''Act''), in general, and Section 6(b)(4)[5] of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its issuers and other persons using its facilities. The Exchange believes that the proposed Listing Fee and, for certain DSPs, Annual Fee increases are reasonable and appropriate in view of costs incurred for administrative and regulatory services provided by the Exchange with respect to such DSP issues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2009–106 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2009–106. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[6] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2009–106 and should be submitted on or before December 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29392 Filed 12–9–09; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] The text of the proposed rule change is available on NYSE Arca's Web site at *http://www.nyx.com*, on the Commission's Web site at *http://www.sec.gov*, at NYSE Arca, and at the Commission's Public Reference Room.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61112; File No. SR–BX–2009–077]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer Several Market Data Products

December 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2009, NASDAQ OMX BX (''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. BX has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to offer several market data products substantially similar to market data products previously approved by the Commission for The NASDAQ Stock Market LLC (''Nasdaq''). The Exchange does not expect that the proposed rule change will have any direct effect, or significant indirect effect, on any other Exchange rule in effect at the time of this filing. The text of the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

change is below. Proposed new language is italicized.[4]

* * * * *

7039. BX Last Sale Data Feeds

(a) *The Exchange shall offer proprietary data feeds containing real-time last sale information for trades executed on the Exchange. There shall be no fee for BX Last Sale Data Feeds.*

(1) *''BX Last Sale for Nasdaq'' shall contain all transaction reports for Nasdaq-listed securities; and*

(2) *''BX Last Sale for NYSE/Amex'' shall contain all such transaction reports for NYSE- and Amex-listed securities.*

* * * * *

7047. BX BBO Feeds

(a) The Exchange shall offer proprietary data feeds containing real-time market information from the Exchange Market Center. There shall be no fee for BX BBO Feeds.

(1) *''BX BBO for Nasdaq'' shall contain the Exchange's best bid and offer for Nasdaq-listed securities;*

(2) *''BX BBO for NYSE'' shall contain the Exchange's best bid and offer for NYSE-listed securities; and*

(3) *''BX BBO for Amex'' shall contain the Exchange's best bid and offer for Amex-listed securities.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to offer certain market data products on the Exchange that have been established by Nasdaq and previously approved by the Commission. As discussed below, these market data products include the BX Last Sale Data Feeds and the BX BBO Feeds.

BX Last Sale Data Feeds

The Exchange proposes to offer access to real-time market data to data distributors for no fee, enabling those distributors to disseminate the data via the internet and television at no cost to millions of internet users and television viewers.

The proposed BX Last Sale market data products are real-time data feeds that provide real-time last sale information including execution price, volume, and time for executions occurring within the Exchange's system. The Exchange believes that this data feed will increase transparency and the efficiency of executions by enabling vendors to provide additional market data in a cost efficient manner. Specifically, the Exchange will create the Exchange Last Sale for Nasdaq, as well as the Exchange Last Sale for New York Stock Exchange (''NYSE'') and the Exchange Last Sale for Amex data products, that provides real-time last sale information including execution price, volume, and time for Nasdaq, NYSE- and Amex-securities executions, respectively, occurring within the Exchange's system.

The Exchange proposes to offer the data feed without charge. The proposed BX Last Sale products are similar to the NASDAQ Last Sale Data Feed offered by Nasdaq.[5]

BX Best Bid and Offer

The Exchange is proposing a product that will offer a real time data feed of the Exchange's Best Bid and Offer (''BBO''), which will provide investors with necessary information about the market for Nasdaq and NYSE- and Amex-securities. The Exchange will not charge a fee for this product. Quotation information from the Exchange Market Center will be available in three forms, BX BBO for Nasdaq, BX BBO for NYSE and BX BBO for Amex.

The Exchange proposes to offer the data feed without charge. The proposed BX Last Sale products are similar to the NASDAQ Last Sale Data Feed offered by Nasdaq.[6]

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general and with Sections 6(b)(5) of the Act,[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule changes will advance these goals since use of these data feeds is voluntary and they are offered at no cost.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

BX proposes adopting several market data products that are substantially similar to market data products established by Nasdaq.[11] BX will provide the data feeds without charge. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[4] Changes are marked to the rules of NASDAQ OMX BX, Inc., found at *http://nasdaqomxbx.cchwallstreet.com.*

[5] *See* Nasdaq Rule 7039.

[6] *See* Nasdaq Rule 7039 [sic].

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] *See* Nasdaq Rules 7039 and 7047.

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2009–077 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–077. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2009–077 and should be submitted on or before December 31, 2009.

[12] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29421 Filed 12–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61115; File No. SR–Phlx–2009–97]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Dividend, Merger and Short Stock Interest Strategies

December 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on November 23, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee caps on equity option transaction charges on dividend,[3] merger,[4] and short stock interest[5] strategies, which fee caps are currently set at $1,000 and $25,000 on equity option transaction charges on dividend, merger, and short stock interest strategies, to expand these fee caps to apply to equity options transaction fees assessed on all Registered Options Traders (on-floor) (''ROTs''), specialists, firms and broker-dealers, when such members are trading in their own proprietary account.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after December 1, 2009.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the transaction charge for dividend, merger and short stock strategies to apply to all member organizations trading in their own proprietary account to encourage member organizations to trade on the Exchange. The Exchange believes that offering the cap to all member organizations will continue to attract additional liquidity and order flow to the Exchange and allow the Exchange to remain competitive with other options exchanges in connection with these types of options strategies.

Currently, equity options transaction charges assessed to specialists and ROTs are capped at $1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class. In addition, there is a $25,000 per member organization fee cap on equity option transaction charges incurred in one month for dividend, merger and short stock interest strategies combined. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this proposal, the Exchange defines a ''dividend strategy'' as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. *See e.g.,* Securities Exchange Act Release No. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR–Phlx–2006–40).

[4] For purposes of this proposal, the Exchange defines a ''merger strategy'' as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock.

[5] For purposes of this proposal, the Exchange defines a ''short stock interest strategy'' as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

Exchange proposes to apply these fee caps on the equity options transaction fees assessed to ROTs, specialists, Firms and Broker-Dealers, when such members are trading in their own proprietary account.

In order to capture the necessary information electronically, the Exchange has modified the Floor Broker Management System (FBMS)[6] to allow for members to designate on the trade ticket whether the trade involves a dividend, merger, or short stock interest strategy[7].

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that expanding the dividend, merger and short stock interest strategy fee caps to apply equity transaction charges assessed to all member organizations is equitable because it uniformly applies to all member organizations. The Exchange's proposal to limit the fee cap to transactions occurring in the member's proprietary account is consistent with the current fee schedule and industry fee assessments of member firms that allow for different rates to be charged for different order types originated by dissimilarly classified market participants.[10] For example, the Exchange assesses different transaction fees applicable to the execution of Principal Acting as Agent Orders (''P/A Orders'')[11] and Principal Orders (''P Orders'')[12] sent to the Exchange via the Intermarket Option Linkage (''Linkage'') under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Plan''). The Exchange charges $0.45 per option contract for P Orders sent to the Exchange and $.30 per contract for P/A Orders.[13] Also, the Exchange recently amended its fee schedule to assess a different transaction fee when waiving the Firm Proprietary Options Transaction Charge for members executing facilitation orders.[14] The Exchange believes that applying dividend, merger and short stock interest strategy fee caps to all member organizations, when such members are trading in their own accounts, is consistent with rate differentials that exist in the current fee schedule and serves to encourage members to facilitate customer order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[15] and paragraph (f)(2) of Rule 19b–4[16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–97 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–97. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2009–97 and should be submitted on or before December 31, 2009.

[17] 17 CFR 200.30–3(a)(12).

[6] FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. *See* Exchange Rule 1080, Commentary .06.

[7] The Exchange eliminated its manual rebate process and modified certain trading tickets on June 28, 2007. *See* Securities Exchange Release No. 55972 (March 6, 2009), 74 FR 10980 (March 13, 2009) (SR–Phlx–2007–47) [sic].

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] NYSE Amex currently charges different rates to different market participants in assessing its firm facilitation fee. *See* Securities Exchange Act Release No. 60378 (July 23, 2009), 74 FR 38245 (July 31, 2009) (SR–NYSEAmex–2009–38).

[11] A P/A order is an order for the principal account of a specialist (or equivalent entity on another participant exchange that is authorized to represent public customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. *See* Exchange Rule 1083(k)(i) [sic].

[12] A Principal Order is an order for the principal account of an Eligible Market Maker and is not a P/A Order. *See* Exchange Rule 1083(k)(ii) [sic].

[13] *See* Securities Exchange Act Release No. 60210 (July 1, 2009), 74 FR 32989 (July 9, 2009) (SR–Phlx–2009–53).

[14] *See* Securities Exchange Act Release No. 60477 (August 11, 2009), 74 FR 41777 (August 18, 2009) (SR–Phlx–2009–67).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29422 Filed 12–9–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61110; File No. SR–MSRB–2009–17]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of (i) Amendments to Rule G–8 (Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers), Rule G–9 (Preservation of Records), and Rule G–11 (New Issue Syndicate Practices); (ii) a Proposed Interpretation of Rule G–17 (Conduct of Municipal Securities Activities); and (iii) the Deletion of a Previous Rule G–17 Interpretive Notice

December 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 18, 2009, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change consisting of (i) proposed amendments to Rule G–8 (books and records to be made by brokers, dealers and municipal securities dealers), Rule G–9 (preservation of records), and Rule G–11, (new issue syndicate practices); (ii) a proposed interpretation (the ''proposed interpretive notice'') of Rule G–17 (conduct of municipal securities activities); and (iii) the deletion of a previous Rule G–17 interpretive notice on priority of orders dated December 22, 1987 (the ''1987 interpretive notice''). The MSRB requested that the proposed rule change become effective for new issues of municipal securities for which the Time of Formal Award (as defined in Rule G–34(a)(ii)(C)(1)(a)) occurs more than 60 days after approval of the proposed rule change by the SEC.

The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org/msrb1/sec.asp*), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed amendments to Rule G–11 would: (1) Apply the rule to all primary offerings, not just those for which a syndicate is formed; (2) require that all dealers (not just syndicate members) disclose whether their orders are for their own account or a related account; and (3) require that priority be given to orders from customers over orders from syndicate members for their own accounts or orders from their respective related accounts, to the extent feasible and consistent with the orderly distribution of securities in the offering, unless the issuer otherwise agrees or it is in the best interests of the syndicate not to follow that order of priority.

The proposed amendments to Rules G–8 and G–9 would require that records be retained for all primary offerings of: (1) All orders, whether or not filled; (2) whether there was a retail order period and, if so, the issuer's definition of ''retail;'' and (3) those instances when the syndicate manager allocated bonds other than in accordance with the priority provisions of Rule G–11 and the specific reasons why it was in the best interests of the syndicate to do so.

The proposed interpretive notice would provide that violation of these priority provisions would be a violation of Rule G–17, subject to the same exceptions as provided in proposed amended Rule G–11. It also would provide that Rule G–17 does not require that customer orders be accorded greater priority than orders from dealers that are not syndicate members or their respective related accounts. The proposed interpretive notice also would provide that it would be a violation of Rule G–17 for a dealer to allocate securities in a manner that is inconsistent with an issuer's requirements for a retail order period without the issuer's consent. Issuance of the notice, in addition to the amendments to Rule G–11, is consistent with previous guidance issued by the Board that all activities of dealers must be viewed in light of the basic fair dealing principles of Rule G–17, regardless of whether other MSRB rules establish additional requirements on dealers.[3]

The guidance set forth in the proposed interpretive notice arose out of the Board's ongoing review of its General Rules as well as concerns expressed by institutional investors that their orders were sometimes not filled in whole or in part during a primary offering, yet the bonds became available shortly thereafter in the secondary market. They attributed that problem to two causes: first, some retail dealers were allowed to place orders in retail order periods without going away orders and second, syndicate members, their affiliates, and their respective related accounts were allowed to buy bonds in the primary offering for their own account even though other orders remained unfilled. There was also concern that these two factors could contribute to restrictions on access to new issues by retail investors, in a manner inconsistent with the issuer's intent.

The MSRB had last addressed the priority of orders in the 1987 interpretive notice.[4] That guidance interpreted Rule G–17 to require generally that customer orders be filled before orders from dealers and dealer-related accounts. Dealer-related accounts were defined to ''include a municipal securities investment portfolio, arbitrage account, or secondary trading account of a syndicate member, a municipal securities investment trust sponsored by a syndicate member, or an accumulation account established in connection with such a municipal securities investment trust.'' The notice did not limit the ability of the syndicate manager to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] MSRB Notice 2009–42 (July 14, 2009)—Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities.

[4] The 1987 interpretive notice was filed with the SEC on December 22, 1987 for immediate effectiveness. *See* File No. SR–MSRB–1987–14.

allocate away from the priority provisions of the syndicate if to do so would be in the best interests of the syndicate. The Board determined to update the guidance provided in the 1987 interpretive notice due to changes in the marketplace and subsequent amendments to Rule G–11. The proposed interpretive notice will supersede the 1987 interpretive notice, which will be deleted as part of the proposed rule change.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[5] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule changes and proposed interpretive notice are consistent with the Act because they will prevent fraudulent and manipulative acts and practices and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On August 11, 2009, the MSRB published for comment the proposed amendments and proposed interpretive notice that comprise the proposed rule change.[6] The MSRB received comments from five commentators.[7]

First Southwest Letter

First Southwest supported the proposed amendments to Rule G–11, in particular: (1) The change that would require all dealers to disclose whether their orders are for their own accounts or related accounts and (2) the changes that would require that underwriters give priority to customer orders. It characterized the practice of filling dealer orders or related account orders before customer orders as ''front running'' and supported the changes to Rule G–11 to strengthen the prohibition against front running.

First Southwest assumed that one of the Board's goals in publishing Notice 2009–47 was to address flipping and said that the Board should go further by addressing flipping by non-syndicate members, hedge funds, investment advisors, mutual funds, bank portfolios, tender option bond (TOB) programs, and institutional investors. They suggested that the Board undertake a thorough study of flipping and, if appropriate, make recommendations for the regulation of this practice. They suggested that the following questions be addressed: (1) Do purchasers of bonds from a primary offering have the right to sell their bonds at any time? (2) Do purchasers of bonds from a primary offering have a right to take an immediate profit when possible? (3) Do flippers provide liquidity to the municipal marketplace? (4) Is flipping a case of demand being greater than supply thereby creating price discovery?

MWAA Letter

MWAA was supportive of the proposals regarding retail order periods in the proposed interpretive notice. They said that they enforce their retail order periods and, in particular, check for flipping. They said that they prefer that retail firms participate in the selling group, rather than buying during the institutional sales order period and marking up the bonds for their retail clients. Their letter did not address the proposed rule amendments.

Siebert Letter

Siebert commented on the proposed interpretive notice, stating that the retail order period process had broken down because few issuers were enforcing it. They said that some syndicate members submit large orders that they describe as bundled retail orders and that some institutional investors characterize their orders as retail, when in fact they probably are not. They said that some underwriting firms (primary book-runners) have formed arrangements with other firms to ''funnel'' bonds at the full, or split, takedown out of the syndicate, characterizing these orders as retail, rather than more appropriately as selling group orders. They said they were in full support of the concerns expressed by institutional investors and of enforcement of the underwriting rules governing fair dealing.

RBDA Letter

RBDA assumed that the proposed interpretive notice and proposed amendments to Rule G–11 were directed at flipping and said that much flipping is done by institutional investors, which the proposed interpretive notice would not address. They said that a dealer that submits retail orders during a retail order period without *bona fide* orders from retail customers already violates Rule G–17, which it said may be enforced through strict enforcement of existing rules and interpretations. They said that it is not always possible for a dealer to know whether an order is truly retail, for example if it comes from a bank trust department or a third party asset manager.

RBDA said that the proposed definition of ''affiliate'' and ''related account'' were too broad and would capture investor accounts that might be sufficiently independent to warrant treatment similar to unaffiliated customers. They suggested that the Board consider an alternative definition based on Rule G–14, such that if a trade would be required to be reported to RTRS without a special trade indicator, the investor would not be considered an affiliate or related account.

They also said that the proposed amendments would establish new recordkeeping rules for secondary market trading accounts.

SIFMA Letter

SIFMA opposed the proposed amendments to Rule G–11, arguing that they would disrupt the process of allocating securities. They objected to a rule that is focused only on underwriters, their affiliates, and related accounts, which they said would not eliminate front running and the ''placing of phantom [retail] orders.'' They said that the proposed amendments would add nothing that is not already prohibited under Rule G–17, which applies to all dealers, whether they are syndicate members or not. They said that dealers maintain records of orders, allotments, trade reporting data, and trade confirmations, which are used

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[5] 15 U.S.C. 78o–4(b)(2)(C).

[6] *See* MSRB Notice 2009–47 (August 11, 2009).

[7] Letters from: Carl Giles, Managing Director, First Southwest Company (''First Southwest''), to Peg Henry, MSRB, dated September 10, 2009; Letter from Lynn Hampton, Vice President for Finance and Chief Financial Officer, Metropolitan Washington Airports Authority (''MWAA''), to Ronald A. Stack, MSRB Chair, dated August 18, 2009; Letter from Michael Decker and Mike Nicholas, Co-Chief Executive Officers, Regional Bond Dealers Association (''RBDA''), to Ms. Henry, dated September 11, 2009; Letter from Leon J. Bijou, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), to Ms. Henry, dated September 11, 2009; and Letter from Napoleon Brandford, III, Chairman, Siebert Brandford Shank & Co., L.L.C. (''Siebert''), to Ms. Henry, dated September 8, 2009.

by FINRA to audit violations of Rule G–17. They ''urge[d] FINRA to vigorously enforce existing laws and regulations to prevent front running, placing phantom orders and all other deceptive, dishonest or unfair practices.''

SIFMA said that the proposed amendments to Rule G–11 would have detrimental effects on the process of allocating securities. They said that the amendments would reduce competition and result in higher borrowing costs. They said that the proposed amendments would interfere with the discretion afforded to syndicate managers by current Rule G–11.

SIFMA also said that the proposed amendments would not be consistent with FINRA's proposed rule on fixed price offerings, which they said would permit sales to affiliates as long as the sale was not at a discount.

SIFMA supported the proposed interpretive notice, which they characterized as providing more flexibility than the proposed rule changes.

Response to Comment Letters

Most of the commentators assumed that the purpose of the proposed rule change was the prevention of flipping.[8] Some of the commentators [9] then objected to the proposed amendments and, in RBDA's case, the proposed interpretive notice, on the grounds that they would not successfully eliminate flipping. Some of the commentators [10] also stated that the filling of dealer orders in advance of customer orders constituted front-running and was already prohibited under SEC rules. The Board's objective in proposing the rule change is the broader distribution of municipal securities, rather than the elimination of flipping. Rule G–11 was designed to address the concerns expressed by Congress that the ''economic power accruing to banks by virtue of their role as major consumers as well as underwriters of new issue municipals has led to a loose set of syndicate rules which permit banks to be underwriter distributors of new issues of municipal bonds and in the same issue give their own investment portfolio the prerogatives and priorities of public institutional orders.'' [11] Although Congress specifically focused on bank-related portfolios, the MSRB saw no reason to distinguish for purposes of Rule G–11 between such portfolios, on the one hand, and affiliated investment trusts or related portfolios of securities firms, on the other.[12] The Board determined that it was appropriate to address potential abuses in the allocation of securities to customers at this time and that the Board would consider the other issues raised by the commentators as noted above in the context of its broader ongoing review of its fair practice and other rules.

Only two of the comment letters expressly addressed the proposed amendments to Rule G–8 and Rule G–9. SIFMA suggested that existing recordkeeping rules were adequate to permit enforcement of Rule G–17 if vigorously enforced by FINRA. However, existing Rule G–9 does not require retention of records of unfilled orders, which limits the ability of FINRA to effectively surveil for compliance with these requirements. The Board determined that the proposed amendments to G–8 and G–9 are necessary to permit proper enforcement of the proposed rule change. Although RBDA commented that the proposed rule change would impose new recordkeeping requirements on secondary market trading accounts, the proposed rule change would merely move the existing recordkeeping requirements for such accounts to a new subsection of Rule G–8.

The Board determined that the RBDA proposal to define ''affiliate'' based on Rule G–14 trade reporting concepts was not advisable, because it would result in a weakening of existing guidance in that a dealer's proprietary account would be considered ''related,'' while a dealer's TOB account would not.

The Board did not agree with the SIFMA comment letter that the proposed interpretive notice is more flexible than the proposed amendments to Rule G–11, noting that the language in the proposed interpretive notice supposedly providing more flexibility—''to the extent feasible and consistent with the orderly distribution of securities in a primary offering''—is also contained in the proposed amendments to Rule G–11. The Board also did not agree that the proposed amendments to Rule G–11 would have detrimental effects on the process of allocating securities or that the amendments would reduce competition and result in higher borrowing costs. The Board also did not agree that the proposed amendments would interfere with the discretion afforded to syndicate managers by current Rule G–11, noting that neither the proposed amendments to Rule G–11 nor the proposed interpretive notice would preclude the allocation of securities to underwriters for their own accounts or their related accounts, because exceptions are provided if the issuer consents or the syndicate manager concludes that it is in the best interests of the syndicate to do so and properly documents that decision. Finally, with regard to SIFMA's comment on the proposed FINRA fixed price offering rule, there is no comparable fixed price offering rule for municipal securities.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB requested that the proposed rule change become effective for new issues of municipal securities for which the Time of Formal Award (as defined in Rule G–34(a)(ii)(C)(1)(a)) occurs more than 60 days after approval of the proposed rule change by the SEC.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2009–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2009–17. This file number should be included on the

[8] *See* letters from First Southwest, MWAA, RBDA, and SIFMA.

[9] *See* letters from RBDA and SIFMA.

[10] *See* letters from First Southwest and SIFMA.

[11] S. Rep. No. 94–75, at 49 (1975).

[12] *See* Notice of Filing of Proposed Rule G–11 on Syndicate Practices—MSRB Rule G–11, [1977–1987 Transfer Binder] MSRB Manual (CCH) at 10,363.

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2009–17 and should be submitted on or before December 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29420 Filed 12–9–09; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61103; File No. SR–NSX–2009–07]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee and Rebate Schedule To Increase Transaction Rebates to $.0024 per Share and Implement a 50% Market Data Rebate for Displayed Order Delivery Orders of Certain ETP Holders, and To Adopt a New Rule 16.4 That Would Use ''Liquidity Adding ADV'' To Determine the Volume Eligibility for all Rebate Tiers in Order Delivery

December 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 24, 2009, National Stock Exchange, Inc. filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing a rule change, operative at commencement of trading on December 1, 2009, which proposes to amend the NSX Fee and Rebate Schedule (the ''Fee Schedule'') and adopt a new Rule 16.4. In summary, the rule change results in the use of the measurement ''Liquidity Adding ADV'' to determine volume eligibility for all Order Delivery mode of order interaction (''Order Delivery'')[3] rebate tiers, as well as an increase in transaction rebates to $.0024 per share and implementation of a 50% market data rebate for displayed Order Delivery orders of ETP Holders that achieve at least 5 million in Liquidity Adding ADV.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to modify the Fee Schedule and establish a new Exchange Rule 16.4 that would result in the use of ''Liquidity Adding ADV'', a measurement currently in use elsewhere in the Fee Schedule, to determine volume eligibility for all rebate tiers in Order Delivery. In addition, for ETP Holders that achieve at least five million in Liquidity Adding ADV, the proposed modifications would increase rebates for displayed orders of securities priced at or above one dollar in Order Delivery to $.0024 per share and provide a 50% market data rebate for displayed Order Delivery orders.

Liquidity Adding Rebate in Order Delivery:

Currently, for liquidity adding displayed order executions of securities trading at one dollar or higher in Order Delivery, the Fee Schedule provides a progressively higher rebate (of $0.0008, $0.0010 or $0.0012 per share) determined by the number of such shares an ETP Holder has executed on average per day (at least one million and less than ten million, at least ten million and less than 20 million, and at least 20 million, respectively) (the number of such shares being referred to in the Fee Schedule as ''Liquidity Adding ADV (O/D Displayed)''). Similarly, for liquidity adding Zero Display Order[4] executions of securities trading at one dollar or higher in Order Delivery, eligibility for rebates for such orders is based on the average daily number of such shares an ETP Holder has executed (''Liquidity Adding ADV (O/D Dark)'').

[4] ''Zero Display Orders'' as used herein and in the Fee Schedule means ''Zero Display Reserve Orders'' as specified in NSX Rule 11.11(c)(2)(A).

With the proposed rule change, with respect to rebates for providing liquidity in Order Delivery (in both displayed orders and Zero Display Orders) of securities one dollar and higher, the eligibility measurements of ''Liquidity Adding ADV (O/D Displayed)'' and ''Liquidity Adding ADV (O/D Dark)'' would be deleted and replaced with the measurement ''Liquidity Adding ADV.'' This measurement is used elsewhere in the Fee Schedule and means, with respect to an ETP Holder, the number of shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days) across all tapes on NSX for the calendar month (or partial month, as applicable) in which the executions occurred.[5] ''Liquidity Adding ADV'' is a broader measurement than the two measurements proposed to be deleted in that it captures all liquidity providing shares executed on the Exchange, including sub-dollar shares, both displayed and non-displayed orders, and executions in both Order Delivery and the Automatic Execution mode of order interaction (''AutoEx'').[6]

In addition, with respect to liquidity adding displayed order executions of securities trading at one dollar or higher in Order Delivery, the proposed rule change would retain the first tier currently in effect (rebating $0.0008 per share if an ETP Holder's relevant volume is at least one million and less than ten million) but reduce the high end of such tier from ten million to five million. Further, the proposed rule change would eliminate the two higher eligibility tiers (rebating $0.0010 or $0.0012 at 10 million and 20 million, respectively) and, in their place, provide a rebate of $0.0024 per share if an ETP Holder achieves a Liquidity Adding ADV of at least five million shares during the measurement period.

Market Data Rebate in Order Delivery:

Currently, market data revenues attributable to quoting and trading in Order Delivery (regardless of whether displayed or Zero Display Orders) are not shared with ETP Holders.

The proposed rule change would provide a rebate to each ETP Holder equal to fifty percent (50%) of the market data revenue attributable to such ETP Holder's trading and quoting of displayed orders priced at one dollar or higher in Order Delivery, provided that the ETP Holder achieves a Liquidity Adding ADV of at least five million shares during the measurement period. As is currently the case, no market data revenue will be shared where attributable to trading or quoting in AutoEx, Zero Display Orders, or sub-dollar securities.

As referenced in Explanatory Endnote 8 of the proposed Fee Schedule, proposed new Exchange Rule 16.4 describes the market data revenue rebate program. Rule 16.4 is based on prior Exchange Rule 16.2(b), which was deleted from the NSX Rules pursuant to a rule change effective November 6, 2008.[7] Proposed Rule 16.4(a) makes explicit that no market data rebates will be provided with respect to orders in AutoEx. Proposed Rule 16.4(b) provides that ETP Holders that have achieved Liquidity Adding ADV of at least five million shares shall receive a rebate of fifty percent (50%) of Tape A, B and C market data revenue attributable to such ETP Holder's trading and quoting of non-Zero Display Reserve Orders priced at or above one dollar in Order Delivery mode.[8] For purposes of clarity, Rule 16.4(b) further states that ETP Holders shall receive no rebate for market data revenue attributable to securities in Order Delivery priced under one dollar or Zero Display Orders.

Proposed Rule 16.4 also specifies that such rebates shall be paid quarterly and that, notwithstanding the foregoing, an ETP Holder shall not be eligible for market data revenue rebates which aggregate less than $250 per quarter with respect to such ETP Holder. This exception for *de minimis* payments is based on the Exchange's belief that the monetary value of such rebate is outweighed by the associated administrative burden both to the Exchange and to the recipient ETP Holders.[9] Finally, proposed Rule 16.4(c) establishes that market data rebates paid or payable to ETP Holders may be modified based on market data revenue adjustments applicable to the Exchange that may be made from time to time by the securities information processors.

The proposed rule change would not modify other rebate calculations, volume tiers, fees or rebates that are currently included in the Fee Schedule, including fees or rebates applicable to orders in AutoEx or regarding securities priced under one dollar in Order Delivery.

Rationale:

The Exchange has determined that these changes are necessary to create incentives for ETP Holders to submit increased volumes of orders in Order Delivery and, ultimately, to increase the revenues of the Exchange for the purpose of continuing to adequately fund its regulatory and general business functions. The Exchange has further determined that the Exchange's reintroduction of a market data rebate program in Order Delivery is necessary for competitive reasons.[10] The Exchange believes that these rebate changes, and in particular the reintroduced market data rebate program pursuant to proposed Exchange Rule 16.4, will not impair its ability to carry out its regulatory responsibilities.

The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide displayed orders and Zero Display Orders in Order Delivery, and is not discriminatory because ETP Holders are free to elect whether or not to send displayed orders or Zero Display Orders via Order Delivery or AutoEx. In addition, the proposed modifications, by providing a market data rebate for displayed orders only and by reducing the volume eligibility thresholds for displayed orders in Order Delivery which results in an increased (and highest available in Order Delivery) rebate amount of $0.0024, will tend to incentivize ETP Holders to submit displayed orders over Zero Display Orders in Order Delivery. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice:

The Exchange intends to make the proposed modifications, which are effective on filing of this proposed rule, operative for trading on December 1, 2009. Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of a Regulatory Circular of the changes to the Fee Schedule and Rule 16.4 and will post a copy of the rule filing on the Exchange's Web site (*http://www.nsx.com*).

[5] *See* Explanatory Endnote 3 to the Fee Schedule.

[6] *See supra,* footnote 3.

[7] *See* Securities Exchange Act Release No. 58935 (November 13, 2008), 73 FR 69703 (November 19, 2008) (NSX–2008–19). The Exchange had previously, pursuant to one of several iterations of then-current Rule 16.2(b) in effect and approved by the Commission, established a rebate program (similar to the proposed rule change) that shared 50% of trade and quote market data revenue in Order Delivery; *see* Securities Exchange Act Release No. 56890 (December 4, 2007), 72 FR 70360 (December 11, 2007) (NSX–2007–13).

[8] The Allocation Amendment of Regulation NMS provides that market data revenue will be received by self-regulatory organizations such that 50% of the revenue is based on the reporting of quotes and 50% is based on the reporting of transactions. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[9] *See* Securities Exchange Act Release No. 57316 (February 12, 2008), 73 FR 9379 (February 20, 2008) (NSX–2008–01).

[10] Market data rebates in order delivery are currently provided by at least one competitor of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[11] in general, and Section 6(b)(4) of the Act,[12] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed rule change is not discriminatory in that all ETP Holders are eligible to submit (or not submit) trades and quotes in Order Delivery or AutoEx in all tapes and as either displayed or undisplayed, and may do so at their discretion in the daily volumes they choose during the course of the measurement period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [13] and subparagraph (f)(2) of Rule 19b–4 [14] thereunder, because, as provided in (f)(2), it changes ''a due, fee or other charge applicable only to a member'' (known on the Exchange as an ETP Holder). At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2009–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2009–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2009–07 and should be submitted on or before December 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29391 Filed 12–9–09; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61105; File No. SR–FINRA–2009–082]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Reporting of Trade Cancellations to FINRA

December 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 24, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to (1) amend FINRA trade reporting rules to permit members to report trade cancellations after 5:15 p.m. Eastern Time on trade date to the FINRA/Nasdaq Trade Reporting Facility (''FINRA/Nasdaq TRF'') and the OTC Reporting Facility (''ORF''); and (2) make certain conforming changes to the rules relating to the submission of trade cancellations to the Alternative Display Facility (''ADF''). The amendments proposed herein are identical to the current rules relating to the FINRA/NYSE Trade Reporting Facility (''FINRA/NYSE TRF'') and would make FINRA rules governing the submission of trade cancellations consistent across the ''FINRA Facilities.'' [3]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ADF, FINRA/Nasdaq TRF, FINRA/NYSE TRF and ORF are collectively referred to herein as the ''FINRA Facilities.''

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA rules require members to report the cancellation of any over-the-counter trade that was previously submitted to a FINRA Facility within certain prescribed time periods.[4] For example, if a trade executed during normal market hours (*i.e.,* 9:30 a.m. to 4 p.m. Eastern Time) is canceled during normal market hours on trade date, the cancellation must be reported to FINRA within 90 seconds.[5]

The rules governing the reporting of trade cancellations to the FINRA/Nasdaq TRF and ORF are based on the traditional 5:15 p.m. ''media'' cut-off time (*i.e.,* for the submission of trades for public dissemination purposes) and prohibit the reporting of trade cancellations after 5:15 p.m. on trade date.[6] In other words, although the FINRA/Nasdaq TRF and ORF are open until 8 p.m., if a member does not report a trade cancellation by 5:15 p.m. on trade date, then the member must wait until the next day to report the cancellation. This means that trade cancellations are not submitted to the Securities Information Processors (''SIPs'') by the FINRA/Nasdaq TRF or to the Trade Data Dissemination Service (''TDDS'') feed by the ORF after 5:15 p.m. on trade date, and the high price/low price/last sale price calculations for the day are not updated after 5:15 p.m.[7] By contrast, the rules relating to the ADF and FINRA/NYSE TRF do not include a 5:15 p.m. cut-off. Cancellations on trade date can be reported to these two facilities until the time they close (6:30 p.m. for the ADF and 8 p.m. for the FINRA/NYSE TRF),[8] and the SIPs update the high/low/last calculations accordingly.

FINRA is proposing to amend Rules 6380A(g)(2) and 6622(f)(2) relating to the FINRA/Nasdaq TRF and the ORF, respectively, to eliminate the 5:15 p.m. cut-off and to allow members to submit reports of trade cancellations on trade date until the close of the facilities at 8 p.m. As a result of the proposed rule change, reports of trade cancellations submitted to the FINRA/Nasdaq TRF and ORF until 8 p.m. on trade date will update the high/low/last calculations for the day. The text of the proposed amendments is identical to the text of current Rule 6380B(f)(2) relating to the FINRA/NYSE TRF.[9]

FINRA also is proposing to amend Rule 6282(j)(2) relating to the ADF to conform to Rule 6380B(f)(2) relating to the FINRA/NYSE TRF. Among other changes, the proposed amendments to Rule 6282(j)(2) will provide that if a normal market hours trade is cancelled during market hours on trade date, the cancellation must be reported within 90 seconds.[10]

FINRA believes that the proposed rule change will promote more consistent trade reporting by members by conforming the reporting requirements applicable to trade cancellations across FINRA Facilities. Additionally, the proposed rule change will enhance market transparency by eliminating systematically imposed delays in the reporting of trade cancellations to the FINRA/Nasdaq TRF and ORF.[11]

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.* FINRA is proposing that the implementation date will be between 45 and 90 days following the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will enhance market transparency and promote more consistent trade reporting by members.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[4] *See* Rules 6282(j), 6380A(g), 6380B(f) and 6622(f).

[5] *See* Rules 6380A(g)(2)(A), 6380B(f)(2)(A) and 6622(f)(2)(A).

FINRA notes that currently, the ADF rules do not contain a 90-second reporting requirement for trade cancellations. As described more fully below, FINRA is proposing to amend the ADF rules to conform to the rules for the other FINRA Facilities in this regard.

[6] *See* Rules 6380A(g)(2) and 6622(f)(2).

[7] Market participants historically have relied on the high/low/last calculations provided by the SIPs, *e.g.,* some market data vendors would ''lock in'' high/low/last for the day in their data products at the 5:15 p.m. media cut-off time, and mutual fund companies would set their daily fund net asset values based on the last sale price as of the 5:15 p.m. media cut-off. FINRA does not believe that market participants today rely on the high/low/last calculations provided by the SIPs to the degree they once did. For example, today many market participants buy closing price data directly from the primary listing market for the issue. However, FINRA is requesting that the SEC specifically solicit comment on the industry's reliance on the high/low/last calculation provided by the SIPs and/or TDDS, and in turn, the relevance of the 5:15 p.m. media cut-off today.

[8] *See* Rules 6282(j)(2) and 6380B(f)(2).

[9] FINRA is proposing to make a technical change to Rule 6380B(f)(2)(F) relating to the FINRA/NYSE TRF. Pursuant to SR–NASD–2007–037, FINRA proposed to amend its trade reporting rules to extend the closing time of the FINRA/NYSE TRF from 6:30 p.m. to 8 p.m. Eastern Time. *See* Securities Exchange Act Release No. 55916 (June 15, 2007), 72 FR 34499 (June 22, 2007) (notice of filing and immediate effectiveness of SR–NASD–2007–037). However, FINRA inadvertently neglected to propose to replace a reference to 6:30 p.m. with 8 p.m. in Rule 6380B(f)(2)(F) and is proposing to make that change in this filing.

FINRA also is proposing technical changes, where necessary, to clarify that references to ''before 4 p.m.'' mean ''at or before 4 p.m.'' and references to ''after 6:30 p.m.'' (or 8 p.m., as applicable) mean ''at or after 6:30 p.m.'' (or 8 p.m., as applicable) to close any inadvertent gaps in the rules.

[10] FINRA recently filed a proposed rule change to reduce the 90-second reporting requirement to 30 seconds. *See* Securities Exchange Act Release No. 60960 (November 6, 2009), 74 FR 59272 (November 17, 2009) (notice of filing of SR–FINRA–2009–061). The proposed 30-second reporting requirement also would apply to trade cancellations. Depending on the timing of Commission approval of these filings, FINRA will file an amendment or separate filing, as necessary, to make conforming changes.

[11] FINRA notes that where a proposed rule change strictly proposes to make conforming changes to the rules applicable to one FINRA Facility that are identical to existing rules applicable to one or more other FINRA Facilities, FINRA typically would file such proposed rule change for immediate effectiveness under Section (b)(3)(A) of the Act. However, because the conforming changes proposed herein for the FINRA/Nasdaq TRF and ORF will impact the high/low/last calculations, FINRA is filing under Section (b)(2) of the Act to provide members and other interested parties an opportunity to comment.

[12] 15 U.S.C. 78*o*–3(b)(6).

organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–082 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–082. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2009–082 and should be submitted on or before December 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29390 Filed 12–9–09; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 6839]

30-Day Notice of Proposed Information Collection: DS–2028, Overseas Schools Grant Status Report OMB 1405–0033

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Overseas Schools Grant Status Report.
- *OMB Control Number:* OMB 1405–0033.
- *Type of Request:* Extension.
- *Originating Office:* Office of Overseas Schools, A/OPR/OS.
- *Form Number:* DS–2028.
- *Respondents:* Overseas schools grantees.
- *Estimated Number of Respondents:* 196.
- *Estimated Number of Responses:* 196.
- *Average Hours per Response:* 15 minutes.
- *Total Estimated Burden:* 49.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to obtain or retain a benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from December 10, 2009.

ADDRESSES: Keith Miller, Department of State, Office of Overseas Schools, A/OPR/OS, Room H328, SA–1, Washington, DC 20522–0132, who is reachable on 202–261–8200. You may submit comments by any of the following methods:

- *E-mail: millerkd2@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* Office of Overseas Schools, U.S. Department of State, 2201 C St., NW., Washington, DC 20522–0132.
- *Fax:* 202–261–8224.
- *Hand Delivery or Courier:* 2401 E St., NW., Room H328, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Keith Miller, Department of State, Office of Overseas Schools, A/OPR/OS, Room H328, SA–1, Washington, DC 20522–0132, who is reachable on 202–261–8200 or at *millerkd2@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

The Office of Overseas Schools of the Department of State (A/OPR/OS) is responsible for determining that adequate educational opportunities exist at Foreign Service Posts for dependents of U.S. Government personnel stationed abroad, and for assisting American-sponsored overseas schools to demonstrate U.S. educational philosophy and practice. The information gathered provides the technical and professional staff of A/OPR/OS the means by which obligations, expenditures and reimbursements of the grant funds are monitored to ensure the grantee complies with the terms of the grant.

Methodology: Information is collected via electronic and paper submission.

Additional Information:

Dated: November 25, 2009.

Peggy Philbin,

Executive Director, Bureau of Administration, Department of State.

[FR Doc. E9–29450 Filed 12–9–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 6836]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Benjamin A. Gilman International Scholarship Program

Announcement Type: Cooperative Agreement.

Funding Opportunity Number: ECA/A/S/A–10–10.

Catalog of Federal Domestic Assistance Number: 19.011.

Key Dates

Application Deadline: February 12, 2010.

Executive Summary: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition to administer the Benjamin A. Gilman International Scholarship Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals for the purpose of administering a scholarship program for academic study by U.S. undergraduate students outside the United States.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * ; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

This program provides grants to enable U.S. citizen undergraduate students of limited financial means to pursue academic studies abroad. Such foreign study is intended to expand understanding of other countries and cultures among U.S. students, expose citizens of other countries to Americans from diverse backgrounds, and better prepare U.S. students to assume significant roles in an increasingly global economy.

History

Since the program's inception in 2001, over 4,500 Gilman scholars from more 749 U.S. colleges and universities have studied in 106 countries around the world.

Overview

It is anticipated that, pending appropriation of funds, the Bureau will provide an assistance award of up to $10,420,000 for the purpose of recruiting, selecting, and issuing grants of up to $5,000 to eligible students to assist with the cost of up to one academic year of undergraduate study abroad. Supplements of up to $3,000 for the study of critical need languages will also be provided.

The intent of the authorizing legislation for the Benjamin A. Gilman International Scholarship Program is to broaden the U.S. student population that participates in study abroad by focusing on those students who would not otherwise study outside the U.S. due to financial constraints.

The Bureau also seeks to encourage participating students and their institutions to choose non-traditional study-abroad locations, to study languages, and to help under-represented U.S. institutions offer and promote study-abroad opportunities for their students. These objectives should be addressed in proposals.

Guidelines

Upon receipt of award notification, the administering organization should be prepared to conduct the following activities:

- Disburse scholarship payments to students whose applications will have been screened by the incumbent organization for overseas study in fall 2010 (August–December 2010), and monitor their programs;
- Announce the Gilman competition for overseas study in spring, summer and fall 2011;
- Review applications for overseas study in spring, summer and fall 2011 (January–December 2011);
- Disburse scholarship funds to students for the spring and summer of 2011, and monitor their programs.

Student Eligibility

To apply for a scholarship, an applicant must:

- Be a citizen of the United States. Permanent residents of the United States are not eligible.
- Be an undergraduate student in good standing at an institution of higher education in the United States (including both two-year and four-year institutions).
- Be a recipient of Federal Pell Grant funding during the academic term of his/her application.
- Be applying to, or accepted for, a study abroad program of at least four weeks' duration in a single country and eligible for credit from the student's home institution. Scholarships for summer study abroad are restricted to students studying science, technology, engineering, and mathematics (STEM fields) in any eligible country or in the Southern Hemisphere (in any field). Proof of program acceptance is required prior to award disbursement.
- Not be proposing to study in a country currently under a Travel Warning issued by the United States Department of State or in Cuba. Travel Warnings are issued when the State Department recommends that Americans avoid a certain country. To find a list of these countries, please see *http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html.*

Recruitment, Application, and Selection

(1) The cooperating organization shall publicize the scholarship competition among accredited institutions of higher education in the United States through direct contacts with institutions and participation in major education conferences and events. Emphasis shall be on reaching out to a diverse range of institutions and programs within those institutions.

(2) The selection process shall be carried out by a committee that includes representatives of a diverse mix of accredited institutions of higher education in the United States.

(3) In ranking eligible applicants for scholarships, consideration should be given to academic excellence, financial need, diversity of the applicant pool, fields of study, proposed destination, plans for language study, and type and location of home institution. Preference should be given to applicants with no previous study abroad experience.

Reporting

Following the fall and spring selection panels, the cooperating organization will submit reports on the number of applicants, the number of participants selected, the names of the institutions of higher education in the United States that applicants and participants were attending at the time of application, the names of the institutions sponsoring the study programs abroad, the names and locations of the institutions of higher education outside the United States that

participants were attending during their study program abroad, the award amounts for each participant, the fields and academic periods of study of that participants studied abroad. Because diversity is an important program goal, the cooperating organization should attempt to collect age, ethnic, gender, and disability data from scholarship applicants and recipients, while respecting Federal guidelines on the solicitation of such information. The cooperating organization shall also provide program information and data to be included in the program's annual end-of-year report to Congress.

Additionally, the Bureau of Educational and Cultural Affairs may request other periodic and ad hoc reports. These may include separate breakdowns for students studying in regions or countries of strategic interest and students studying critical need languages.

In a Cooperative Agreement, the ECA program office is substantially involved in program activities above and beyond routine monitoring. ECA program office activities and responsibilities for this program are as follows:

(1) Participation in the design and direction of program activities:

(2) Approval of key personnel;

(3) Guidance in execution of all program components;

(4) Approval of decisions related to special circumstances or problems throughout duration of program;

(5) Assistance with participant emergencies;

(6) Liaison with relevant U.S. Embassies, Fulbright commissions and regional bureaus at the State Department.

II. Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: 2010.

Approximate Total Funding: Up to $10,420,000.

Approximate Number of Awards: 1.

Approximate Average Award: Up to $10,420,000.

Anticipated Award Date: Pending availability of funds, April 1, 2010.

Anticipated Project Completion Date: September 30, 2011.

Additional Information

Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award of up to $10,420,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package

Please contact Bahareh Moradi, Office of Global Educational Programs, ECA/A/S, 4th Floor, U.S. Department of State, SA–5, 2200 C Street, NW., Washington, DC 20522–0504, tel 202–632–6350, fax 202–632–9479, *MoradiBX@state.gov,* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/A–10–10 located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please *see* section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bahareh Moradi and refer to the Funding Opportunity Number ECA/A/S/A–10–10 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under

IV.3a.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b.

All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c.

You must have nonprofit status with the IRS at the time of application. *Please note:* Effective January 7, 2009, all applicants for ECA Federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its *USASpending.gov* Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please Take into Consideration the Following Information When Preparing Your Proposal Narrative

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, Office of Designation, ECA/EC/D, SA–5, Floor C2, Department of State, Washington, DC 20522–0582.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and

attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please Take the Following Information Into Consideration When Preparing Your Budget

IV.3e.1. Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Applicants should budget the maximum possible amount for scholarship and keep administrative and overhead costs to a minimum.

IV.3e.2. Allowable Costs for the Program Include the Following

(1) *Administrative:* Salaries and benefits and other direct administrative expenses such as postage, phone, printing and office supplies.

(2) *Program:* Participant expenses, which may include institutional fees, travel expenses, tuition; expenses related to review panels, including travel and per-diem.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: February 12, 2010.

Reference Number: ECA/A/S/A–10–10.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important Note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 7 copies of the application should be sent to:

Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/A/S/A–10–10, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20522–0504.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

Please Note: Due to Recovery Act related opportunities, there has been a higher than usual volume of grant proposals submitted through Grants.gov. Potential applicants are advised that the increased volume may affect the grants.gov proposal submission process. As stated in this RFGP, ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support. *Contact Center Phone:* 800–518–4726. *Business Hours:* Monday–Friday, 7 a.m.–9 p.m. Eastern Time. *E-mail: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity and Institution's Record/Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

9. *Cost-effectiveness and Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for

Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Bahareh Moradi, Office of Global Educational Programs, ECA/A/S, SA–5, 4th Floor, U.S. Department of State, 2200 C Street, SW., Washington, DC 20522–0504, tel 202–632–6350, fax 202–632–9479, *MoradiBX@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–10–10.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: December 4, 2009.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. E9–29484 Filed 12–9–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6838]

Bureau of Educational and Cultural Affairs; Office of Academic Exchanges

Notice: An Amendment to a RFGP (Near East and South Asia Undergraduate Exchange Program—NESA UGRAD).

Summary: The United States Department of State, Bureau of Educational and Cultural Affairs, announces revisions to a RFGP announced in the **Federal Register** on November 5, 2009 (**Federal Register** Volume 74, Number 213):

Revisions are as follows:

(1) The semester-long program for 25 Pakistani participants has been cancelled and as a result, participant numbers will be decreased to no less than 90.

(2) The program should be designed exclusively as an academic year program for the countries listed under ''Purpose'' (page 4) in the original solicitation.

(3) As a result of the cancellation of the semester-long program component, it is anticipated, that pending availability of funds, the revised funding level will be decreased from $3.5 million to $3 million.

(4) Please note: Pending availability of funds, it is anticipated that the Bureau will be issuing a separate RFGP at a later date in support of a Pakistani semester-long program.

All other terms and conditions of the original announcement remain the same.

Additional Information: Interested organizations should contact Laura Alami, Near East Asia Programs Branch, Office of Academic Exchange Programs, ECA/A/E/NEA, SA–5 Floor 4, U.S. Department of State, Washington, DC 20522–0504, 202–632–3270 and *Fax:* 202–632–9411.

Dated: December 4, 2009.

Maura M. Pally,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. E9–29449 Filed 12–9–09; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 6841]

State-71, Post Capabilities Database

SUMMARY: Notice is hereby given that the Department of State proposes to create a system of records, Post Capabilities Database, State-71, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on November 25, 2009.

It is proposed that the new system will be named ''Post Capabilities Database.'' It is also proposed that the new system will be utilized by medical and administrative personnel of the Office of Medical Services for making clearance decisions for individuals eligible to participate in the health care program and as a reference for local medical capabilities.

Any persons interested in commenting on the new system of records may do so by submitting comments in writing to Margaret P. Grafeld, Director; Office of Information Programs and Services; A/GIS/IPS; Department of State, SA–2; 515 22nd Street, Washington, DC 20522–8001. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination. The new system description, ''Post Capabilities Database, State-71,'' will read as set forth below.

Dated: November 24, 2009.

Steven J. Rodriguez,

Deputy Assistant Secretary of Operations, Bureau of Administration, U.S. Department of State.

STATE–71

SYSTEM NAME:

Post Capabilities Database (PCD).

SYSTEM LOCATION:

Department of State, Office of Medical Services, 2401 E Street, NW., Washington, DC 20522.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Government employees and local health care providers and facilities who might care for U.S. Government employees, both domestically and overseas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes full name, professional degree, address to include post/city location, email and phone numbers for U.S. Government medical staff. The record includes a listing and assessment of medical services and capabilities of local non-U.S. Government facilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Foreign Service Act of 1980, § 904 (22 U.S.C. 4804).

PURPOSE:

These records are utilized and reviewed by medical and administrative personnel of the Office of Medical Services (MED) for making clearance decisions for individuals eligible to participate in the health care program and as a reference for local medical capabilities. It is also used as a directory of MED employees working overseas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this database may be disclosed to other federal agencies with personnel posted overseas as a reference for medical facilities and capabilities at overseas posts. The contact information portion of the database may be shared with private sector entities when required as part of U.S. Embassy services or the operations of the State Department Medical Program.

The Department of State periodically publishes in the **Federal Register** its standard routine uses that apply to all its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to the Post Capabilities Database, State-71.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic.

RETRIEVABILITY:

By individual name, or by post location.

SAFEGUARDS:

All State Department users are given information system security awareness training, including the procedures for handling Sensitive But Unclassified information and personally identifiable information. Annual refresher training is mandatory. Before being granted access to the PCD, a user must first be granted access to the Department of State computer system.

Remote access to the Department of State network from non-Department owned systems is only authorized through Department approved access program. Remote access to the network is in compliance with the Office of Management and Budget Memorandum M–07–16 security requirements of two factor authentication and time out function.

All U.S. Government employees and contractors with authorized access have undergone a thorough background security investigation. Access to the Department of State, its annexes and posts overseas is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

When it is determined that a user no longer needs access, the user account is disabled.

RETENTION AND DISPOSAL:

Records are revised and updated frequently. More specific information may be obtained by writing the Director of Informatics, Office of Medical Services, 2401 E Street, NW., Washington, DC 20522.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Medical Services, Room 2270, Department of State, 2401 E Street, NW., Washington, DC 20522.

NOTIFICATION PROCEDURE:

Individuals who have cause to believe that the Office of Medical Services might have records pertaining to them should write to MED/Informatics, Office of Medical Services, Department of State, 2401 E Street, NW., Washington, DC 20522. The individual must include: Name; current mailing address and zip code; signature; and the location of practice overseas.

RECORD ACCESS PROCEDURES:

Individuals who wish to receive copies of records pertaining to them should write to the Director of Informatics (Address above).

CONTESTING RECORD PROCEDURES:

(*See* Record access procedure, above.)

RECORD SOURCE CATEGORIES:

Information contained in these records comes from the individual subjects and from medical professionals employed by the Department of State.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS UNDER THE PRIVACY ACT:

None.

[FR Doc. E9–29452 Filed 12–9–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 6840]

Privacy Act; Systems of Records; State-65, Speaker/Specialist Program Records

SUMMARY: Notice is hereby given that the Department of State proposes to alter an existing system of records, Speaker/Specialist Program Records, State-65, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on November 25, 2009. It is proposed that the current system will retain the name ''Speaker/Specialist Program Records.'' It is also proposed the altered system description will include revisions and/or additions to the following sections: Categories of Records in the System, Purpose, Authority for Maintenance of the System, Routine Uses of Records Maintenance in the System, Safeguards and Retrievability as well as other administrative updates.

Any persons interested in commenting on the altered system of records may do so by submitting comments in writing to Margaret P. Grafeld, Director; Office of Information Programs and Services; A/GIS/IPS; Department of State, SA–2; 515 22nd Street, Washington, DC 20522–8001. This system of records will be effective

40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The altered system description, ''Speaker/Specialist Program Records, State-65,'' will read as set forth below.

Dated: November 24, 2009.

Steven J. Rodriguez,

Deputy Assistant Secretary of Operations, Bureau of Administration, U.S. Department of tate.

STATE-65

SYSTEM NAME:

Speaker/Specialist Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State, SA–5, C1, 2200 C Street, NW., Washington, DC 20037.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

American experts who have participated or been considered for participation in the Speaker/Specialist Program sponsored by the Bureau of International Information Programs. Speakers/Specialists are recruited for their expertise in addressing foreign audiences in U.S. policies and practices in any of five thematic areas: Economic Security, Political Security, Democracy and Human Rights, Global Issues and Communications, and U.S. Society and Values.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain biographic information about the speaker/specialist including names, social security and passport numbers, contact information, education and professional experience, financial information, correspondence between the subject, the Department and overseas posts regarding the subjects participation in the program; travel itineraries and visa documentation; grant authorization numbers and types; copies of the grant documents; cost and fiscal data; payment vouchers; country clearance telegrams; and, when available, program evaluations and speaker reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 (Management of the Department of State); 22 U.S.C. 1431 *et seq.* (Smith-Mundt United States Information and Educational Exchange Act of 1948, as amended); 22 U.S.C. 2651a (Organization of the Department of State); and 22 U.S.C. 3921 (Management of the Foreign Service).

PURPOSE(S):

The information contained in the Speaker/Specialist Program Records is collected and maintained by the Bureau of International Information Programs in the administration of its responsibility to manage the Department's Speaker/Specialist Program as provided for in the Smith-Mundt Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information in the Speaker/Specialist Program Records is used as follows:

—To generate periodic and ad hoc statistical reports (*e.g.,* the number of speakers addressing a specific issue; or the number of speakers from historically ethnic colleges and universities) in response to requests from Congress, the White House and other U.S. Government entities;

—To service agencies in order to process and prepare the necessary documents for overseas travel; and

—To disclose information to officials of foreign governments and organizations before a participant is sent to that country in order to facilitate participation in programs and events.

The Department of State periodically publishes in the **Federal Register** its standard routine uses that apply to all its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to the Office of the Speaker/Specialist Program Records, State-65.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy; electronic media.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All Department of State employees and contractors with authorized access have undergone a thorough background security investigation. All users are given information system security awareness training, including the procedures for handling Sensitive But Unclassified information and personally identifiable information. Annual refresher training is mandatory. Before being granted access to Speaker/Specialist Program Records, a user must first be granted access to Department of State computer systems. Remote access to the Department of State network from non-Department owned systems is only authorized through a Department-approved access program. Remote access to the network is in compliance with the Office of Management and Budget Memorandum M–07–16 security requirements of two factor authentication and time-out functions. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured filing cabinets or in restricted areas, access to which is limited to authorized personnel. Servers are stored in Department of State secured facilities in cipher locked server rooms. Access to electronic files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be destroyed or retired in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director; Office of Information Programs and Services, Department of State, SA–2, 515 22nd Street, NW., Washington, DC 20522–8001.

SYSTEM MANAGER AND ADDRESS:

Managing Director, Bureau of International Information and Programs, IIP–ECA/IT, SA–5, C1, Department of State, Washington, DC 20522–0581.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that the Bureau of International Information Programs might have records pertaining to themselves should write to the Director, Office of Information Programs and Services, Department of State, SA–2, 515 22nd Street NW., Washington, DC 20522–8001. The individual must specify that he/she wishes the Speaker/Specialist Program Records to be checked. At a minimum, the individual should include: Name; date and place of birth; current mailing address and zip code; signature; a brief description of the circumstances that caused the creation of the record; and the approximate dates which give the individual cause to believe that the Bureau of International Information Programs has records pertaining to him/her.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to

themselves should write to the Director, Office of Information Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. E9–29451 Filed 12–9–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35312]

Massachusetts Department of Transportation—Acquisition Exemption—Certain Assets of CSX Transportation, Inc.

Massachusetts Department of Transportation (MassDOT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from CSX Transportation, Inc. (CSXT) certain physical assets of railroad lines and associated rights-of-way in Massachusetts, including: (1) Portions of the Grand Junction Branch, extending 4.87 miles between milepost QBG 0.00 and milepost QBG 2.70, and between milepost QBG 5.70 and milepost QBG 7.87; (2) a portion of the Boston Terminal Running Track, extending 1.10 miles between milepost QBB 0.00 and milepost QBB 1.10; (3) the New Bedford Secondary, extending 18.48 miles between milepost QN 13.40 (at Cotley Junction) and milepost QN 31.80 (at New Bedford), including CSXT's property interests in the right-of-way and track assets of the North Dartmouth Industrial Track (also known as the Watuppa Branch) between milepost QND 0.0 and milepost QND 0.08 and CSXT's property interests in the right-of-way but not the track assets between milepost QND 0.08 and milepost QND 6.0; [1] (4) the Fall River Secondary, extending 14.20 miles between milepost QNF 0.00 (at Myricks) and milepost QNF 14.2 (at Fall River, Massachusetts—Rhode Island state line); (5) the Framingham to Worcester segment of the Boston Main Line (the BML-West), extending approximately 22.92 miles between milepost QB 21.38 (at Framingham) and milepost QB 44.30 (at Worcester); and (6) the track assets, but not the underlying real estate, constituting the 9.71-mile rail line between milepost QB 1.12 (at CP Cove) and milepost QB 10.83 (at Newton/Riverside) (the BML-East). These properties, which include approximately 71.28 miles of rail line, will be referred to collectively as ''the Railroad Assets.'' [2]

The transaction is scheduled to take place in two stages, pursuant to two separate closings later than the December 24, 2009 effective date of the exemption. One closing is scheduled to take place on May 14, 2010,[3] and the second is scheduled to take place after the first closing but on or before September 15, 2012.[4]

If the notice contains false or misleading information, the exemption is void *ab initio*.[5] Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than December 17, 1009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35312, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Keith G. O'Brien, Baker & Miller, PLLC, 2401 Pennsylvania Avenue, NW., Suite 300, Washington, DC 20037.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov.*

Decided: December 7, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–29441 Filed 12–9–09; 8:45 am]

BILLING CODE 4915–01–P

[1] CSXT previously sold the track and material, and leased the underlying real estate, on the Watuppa Branch between mileposts QND 0.08 and QND 6.0 to the Bay Colony Railroad Corporation (BCLR). *See Bay Colony Railroad Corporation—Acquisition and Operation Exemption—CSX Transportation, Inc., as Operator for New York Central Lines, LLC,* STB Finance Docket No. 34446 (STB served Jan. 16, 2004). CSXT states that, in this transaction, it will convey the full scope of its ownership interest in the Watuppa Branch to MassDOT, subject to BCLR's rights and interests and CSXT's retained easement over the first 0.08 miles of the branch. Pursuant to an agreement between CSXT and MassDOT, BCLR will continue to provide common carrier service over the 5.92 miles of the Watuppa Branch west of milepost QND 0.08, and MassDOT will acquire only the real estate underlying this section of the branch. Because of BCLR's interest in 5.92 miles of the Watuppa Branch, those 5.92 miles have been excluded here from the mileage total for the New Bedford Secondary.

[2] In the transaction, CSXT states that it will not transfer to MassDOT the right or obligation to conduct common carrier freight operations. According to CSXT, pursuant to its retained easements, it will have the exclusive right and ability to provide rail freight service on the Railroad Assets.

[3] The first closing will encompass the sale of the Grand Junction Branch, the Boston Terminal Running Track Assets, the New Bedford Secondary (including CSXT's interests in the Watuppa Branch), and the Fall River Secondary. At the time that MassDOT and CSXT close on the sale of the New Bedford Secondary (including CSXT's interests in the Watuppa Branch) and the Fall River Secondary (collectively, the South Coast Assets), CSXT simultaneously will convey its retained permanent freight easement rights over the South Coast Assets (excluding the 5.92 miles of the Watuppa Branch, over which CSXT does not now possess such rights) to the Massachusetts Coastal Railroad, LLC (Mass Coastal), a Class III rail carrier, pursuant to a separate proceeding, STB Finance Docket No. 35314, *Massachusetts Coastal Railroad, LLC—Acquisition—CSX Transportation, Inc.* Upon consummation of the easement sale at issue in that proceeding, if approved, Mass Coastal will assume freight service operations on the South Coast Assets.

[4] The second closing will encompass the sale of the BML-West and BML-East assets.

[5] A motion to dismiss has been filed in this proceeding. The motion will be addressed in a subsequent Board decision.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2009 0146]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before February 8, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Yarrington, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* 202–366–1915 or *e-mail: Michael.yarrington@dot.gov.*

Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Procedures for Determining Vessel Services Categories for Purposes of the Cargo Preference Act.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0540.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval.

Summary of Collection of Information: The purpose is to provide information to be used in the designation of service categories of individual vessels for purposes of compliance with the Cargo Preference Act under a Memorandum of Understanding entered into by the U.S. Department of Agriculture, U.S. Agency for International Development, and the Maritime Administration.

Need and Use of the Information: The Maritime Administration will use the data submitted by vessel operators to create a list of Vessel Self-Designations and determine whether the Agency agrees or disagrees with a vessel owner's designation of a vessel.

Description of Respondents: Owners or operators of U.S.-registered vessels and foreign-registered vessels.

Annual Responses: 100 responses.

Annual Burden: 800 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: December 3, 2009.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. E9–29402 Filed 12–9–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Final Environmental Assessment (Final EA) and a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for the Proposed Airport Traffic Control Tower With Associated Base Building and Airport Surveillance Radar, Model 9, Replacement/Relocation at Cleveland Hopkins International Airport, Cleveland, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for a Proposed Airport Traffic Control Tower with Associated Base Building and an Airport Surveillance Radar, Model 9, Replacement/Relocation at Cleveland Hopkins International Airport, Cleveland, Ohio.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that the FAA has prepared, and approved on November 18, 2009, a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) based on the Final Environmental Assessment (Final EA) for a Proposed Airport Traffic Control Tower (ATCT) with Associated Base Building and an Airport Surveillance Radar, Model 9 (ASR–9), Replacement/Relocation at Cleveland Hopkins International Airport, (CLE) Cleveland, Ohio. The FAA prepared the Final EA in accordance with the National Environmental Policy Act and the FAA's regulations and guidelines for environmental documents. The Final EA was reviewed and evaluated by the FAA, and was accepted on October 22, 2009 as a Federal document by the FAA's Responsible Federal Official.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Manager, Infrastructure Engineering Center, AJW–C14D, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone number: (847) 294–7494.

SUPPLEMENTARY INFORMATION: The Final EA evaluated the construction and operation of a new ATCT and replacement and relocation of the ASR–9 at CLE. The ATCT would be constructed in the southeast portion of CLE on Taxiway KI and have a maximum height of 325 feet above ground level (AGL). The facility would include a Base Building/Terminal Radar Approach Control (TRACON) Facility, employee parking, security fence and an access road across abandoned Taxiway Q from Postal Road. The facility components will consist of the ATCT cab, tower shaft, Base Building, personnel parking, and guardhouse. The new ATCT and Base Building/TRACON shall be designed to incorporate, as practicable, energy-efficient design, equipment, systems and other measures in their construction in order to reduce energy consumption and improve environmental performance of the new facilities. There will be a maximum of 150 parking spaces for ATCT controllers, the TRACON staff, technical operations staff, administrative personnel, visitors, and Systems Support Center personnel. There will also be a two-story Base Building/TRACON facility with approximately 45,000SF of space. The tower will have an 850 SF cab and a cab eye level elevation of 305 feet AGL. The total space will accommodate the needed staffing and new communications and surveillance equipment. The ATCI's water, sewer, and electrical feeds will be extended and connected to the existing utility lines on the airport. Drainage and runoff will be collected for conveyance via the airport's stormwater drainage system, which is reported by CLE to have excess capacity.

The project also includes replacing and relocating the ASR–9 surveillance radar equipment to a location that is adjacent to the future expansion area of the CLE's Riveredge employee parking lot. Relocation of the ASR–9 is needed because the preferred location for the ATCT lies within the 1,500-foot Clear Area of the airport's existing ASR–9, and the new ATCT shaft would block the radar antenna's coverage to the southeast of the airport. The ASR–9 will be relocated to the Riveredge site to provide unobstructed radar coverage of the ASR–9's 60-mile service area. The base of the ASR–9 tower will be four concrete pylons set on a 30-foot by 30-foot grid, with an equipment shelter, HVAC pads, and security fence. Utility feeds will be from adjacent services in the employee parking lot, as well as from the nearby Remote Transmitter/Receiver (RTR) facility. Access will be via a stub driveway from the existing Riveredge employee parking lot gate. The new ASR–9 will provide enhanced coverage prior to the old ASR–9 being

shut down. Once the new ASR–9 is up and running, the old ASR–9 will be decommissioned and construction will begin on the new ATCT.

The Final EA has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' In addition, FAA Order 5050.4B, ''National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions'' has been used as guidance the preparation of the environmental analysis.

Issued in Des Plaines, Illinois, on December 3, 2009.

Virginia Marcks,

Manager, Infrastructure Engineering Center, Chicago, AJW–C14D Federal Aviation Administration.

[FR Doc. E9–29399 Filed 12–9–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2009–0285]

Pipeline Safety: Requests for Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice of special permit requests we have received from several pipeline operators, seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. This notice seeks public comments on these requests, including comments on any safety or environmental impacts. At the conclusion of the 30-day comment period, PHMSA will evaluate each request and determine whether to grant or deny a special permit.

DATES: Submit any comments regarding these special permit requests by January 11, 2010.

ADDRESSES: Comments should reference the docket numbers for the specific special permit request and may be submitted in the following ways:

- *E-Gov Web Site: http://www.Regulations.gov*. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* DOT Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov*.

Note: Comments are posted without changes or edits to *http://www.Regulations.gov*, including any personal information provided.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any docket. DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477) and is available on *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: *General:* Kay McIver by telephone at (202) 366–0113; or, e-mail at *kay.mciver@dot.gov*.

Technical: Steve Nanney by telephone at (713) 272–2855; or, e-mail at *steve.nanney@dot.gov*.

SUPPLEMENTARY INFORMATION: PHMSA has received several requests for special permits from pipeline operators who seek relief from compliance with certain pipeline safety regulations. Each request is filed in the Federal Docket Management System (FDMS) and has been assigned a separate docket number in the FDMS. Each docket includes any technical analysis or other supporting documentation provided by the requestor, including a description of any alternative measures the operator proposes to take in lieu of compliance. We invite interested persons to participate by reviewing these special permit requests at *http://www.Regulations.gov*, and by submitting written comments, data or other views. Please include any comments on potential environmental impacts that may result if these special permits are granted.

Before acting on these special permit requests, PHMSA will evaluate all comments received on or before the comments closing date. Comments will be evaluated after this date if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny a request and what terms and conditions are appropriate.

PHMSA has received the following special permit requests:

Docket Number	Requester	Regulation(s) affected	Nature of special permit
PHMSA–2009–0266	CountryMark Cooperative, LLP.	49 CFR 195.452(h)(4)(ii)(A),. 49 CFR 195.452(h)(4)(iii)(B).	CountryMark Pipeline, LLC requested relief from certain federal regulations for its 178 mile Intrastate, Mount Vernon, Indiana to Jolietville, Indiana pipeline. CountryMark requests that the special permit conditions be in accordance with the guidelines from ASME B31.4 and the PRCI Pipeline Repair Manual, which states that: • Dents deeper than 6% should be repaired. • In pipe NPS 4 and smaller, dents are allowed up to ¼ inch and • Dents larger than 2% should be analyzed for fatigue. The pipeline runs through the counties of Posey, Gibson, Knox, Green, Owen, Putnam, Morgan, Hendricks, Boone and Hamilton in Indiana. The pipeline has two segments; (1) Mount Vernon to Switz City; and (2) Switz City to Jolietville. This intrastate pipeline was constructed in 1952 and 1953 (8⅝-inch, 0.322″ wall thickness, Grade B steel, seamless pipe) and follows a largely rural route as it passes through 13 (11 Ecological and 2 Drinking Water) Unusually Sensitive Areas. The pipeline operates at a MOP of 800 psig.
PHMSA–2009–0273	Vintage Production California LLC.	49 CFR 192.53, 192.55, 492.105, 192.107, 192.109, 192.111, 192.113, 192.221 192.455, 192.503(b)(3), 192.619.	Vintage Production California LLC requested relief from certain federal regulations for the use of flexible steel pipe. The flexible steel pipe that Vintage proposes to use was designed and manufactured in accordance with API 17J, Specification for Un-bonded Flexible Pipe. Vintage proposes to install approximately 46,300 feet of 6-inch Flex Steel™ pipe in Ventura County, California.
PHMSA–2009–0319	Kern River Gas Transmission Company.	49 CFR 192.625	Kern River Gas Transmission Company requested relief from federal regulations require odorization of natural gas in its Centennial Lateral Line. This line is located in Clark County, Las Vegas, Nevada. The lateral begins at the Kern River 36-inch main line (mile post 519.68) and runs to a meter station that supplies natural gas to the Southwest Gas Corporation. The lateral is 1,083 feet in length and has a 10.750-inch diameter tap valve that transitions into a 12.75-inch, 0.250″ wall thickness, Grade API 5L–X65 pipe line. The current MAOP is 1,200 psig with plans to operate at 1,333 psig in the future per special permit, PHMSA–2007–29078.

Authority: 49 U.S.C. 60118 (c)(1) and 49 CFR 1.53.

Issued in Washington, DC on December 3, 2009.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E9–29400 Filed 12–9–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35314 (Sub-No. 1X)]

Massachusetts Coastal Railroad, LLC–Trackage Rights Exemption–CSX Transportation, Inc.

Pursuant to a written trackage rights agreement,[1] proposed to take effect on May 14, 2010, CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Massachusetts Coastal Railroad, LLC (Mass Coastal) over CSXT's Middleboro Subdivision: (1) Between Mass Coastal's interchange tracks at Taunton, MA, at approximately milepost QN 11.6, and milepost QN 13.4, a distance of approximately 1.8 miles; and (2) between milepost QNB 13.3 and Mass Coastal's interchange tracks at Middleboro, MA, at approximately milepost QNB 20.4, a distance of approximately 7.1 miles, for a total distance of approximately 8.9 miles.[2]

The transaction is scheduled to be consummated on May 14, 2010, but the effective date of the exemption is December 24, 2009 (30 days after the exemption was filed). The purpose of the overhead trackage rights is to enable Mass Coastal to connect the freight easement it is acquiring in STB Finance Docket No. 35314 with its existing lines and to facilitate efficient interchange of traffic with CSXT.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any stay petition must be filed on or before December 17, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste

[1] A redacted version of the trackage rights agreement between CSXT and Mass Coastal was filed with the notice of exemption. An unredacted version of the agreement was concurrently filed under seal.

[2] Mass Coastal concurrently filed, in STB Finance Docket No. 35314, *Massachusetts Coastal Railroad, LLC–Acquisition–CSX Transportation, Inc.*, an application to acquire from CSXT a permanent freight easement over the following lines: (1) Between milepost QN 13.40 and milepost QN 31.8 at New Bedford; (2) between milepost QNF 0.0 at Myricks and milepost QNF 14.2 at Fall River; and (3) the North Dartmouth Industrial Track between milepost QND 0.00 and milepost QND 0.08. This request will be addressed in a separate decision.

(including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35314 (Sub-No. 1X), must be filed with the Surface Transportation Board, 395E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204 and John H. Broadley, John H. Broadley & Associates, PC, Canal Square, 1054 Thirty-First Street, NW., Suite 200, Washington, DC 20007.

Board decisions and notices are available on our Web site at: ''*http://www.stb.dot.gov*.''

Decided: December 7, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–29443 Filed 12–9–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of 10 entities and 22 individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the 10 entities and 22 individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on December 3, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On December 3, 2009, OFAC designated 10 entities and 22 individuals whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees is as follows:

Entities

1. SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Coronado #421, Colonia Centro, Chihuahua, Chihuahua 31000, Mexico; Aeropuerto Internacional, Apartado Postal 586, Chihuahua, Chihuahua 31390, Mexico; R.F.C. SAL8003122W7 (Mexico); R.F.C. SAL581025 (Mexico); (ENTITY) [SDNTK]

2. REPRESENTACIONES INTUR, S.A. DE C.V., Antonio Ortiz 2409, Colonia Quintas Del Sol, Chihuahua, Chihuahua 31250, Mexico; R.F.C. RIN–010219 (Mexico); (ENTITY) [SDNTK]

3. ESTUDIOS Y PROYECTOS INTEGRALES DEL NORTE, S.C., Calle Coronado #421, Colonia Centro, Chihuahua, Chihuahua, Mexico; R.F.C. EPI–980910 (Mexico); (ENTITY) [SDNTK]

4. GRUPO STA CHIHUAHUA, S.A. DE C.V. (a.k.a. MAILCO); Lateral Blvd Periferico Ortiz Mena No. 2409, Col. Quinta Sol, Chihuahua, Chihuahua 31214, Mexico; R.F.C. GSC02086417 (Mexico); R.F.C. GSC0208264IF (Mexico); (ENTITY) [SDNTK]

5. PV STAR, S.A. DE C.V., Ohio No. 4123, Col. Quintas Del Sol, Chihuahua, Chihuahua 31214, Mexico; R.F.C. PST98081 (Mexico); (ENTITY) [SDNTK]

6. COMERCIALIZADORA ITAKA, S.A. DE C.V., Calle Deza y Ulloa Numero 2102A, Colonia San Felipe, Chihuahua, Chihuahua 31240, Mexico; Avenida Paseo Triunfo de la Republica 6610 2, Colonia Alamos de San Lorenzo, Juarez, Chihuahua, Mexico; Fresno No. 1116, Col Granjas, Chihuahua, Chihuahua 31000, Mexico; R.F.C. CIT030305FQ3 (Mexico); (ENTITY) [SDNTK]

7. ILC EXPORTACIONES, S. DE R.L. DE C.V. (a.k.a. GRUPO ILC; a.k.a. ILC CONSULTORES ADMINISTRATIVOS, S. DE R.L. DE C.V.; a.k.a. RESTAURANTE EL HABANERO, S.A. DE C.V.; a.k.a. ''PERFECT SILHOUETTE''; a.k.a. ''ULTRAVITAL''; a.k.a. ''ULTRAPHARMA''; a.k.a. ''EQUIPOSPA''); General Victoriano Cepeda 2, Colonia Observatorio, Miguel Hidalgo, Mexico, Distrito Federal 11860, Mexico; Louisiana No. 24, Esq. Montana, Col. Napoles, Del. Benito Juarez, Mexico, Distrito Federal 03810, Mexico; Periferico Sur #102, Col. Observatorio, Del. Miguel Hidalgo, Mexico, Distrito Federal, Mexico; Huixquilucan, Estado de Mexico, Mexico; R.F.C. IEX–950713–L90 (Mexico); R.F.C. ICA060810942 (Mexico); (ENTITY) [SDNTK]

8. FABRIDIESEL, Juan De Dios Batiz 690 OTE, Colonia El Parque, Los Mochis, Sinaloa 81250, Mexico; R.F.C. ZEBG–771220–PE6 (Mexico); (ENTITY) [SDNTK]

9. FABRIDIESEL, S.A. DE C.V., Blvd Juan De Dios Batiz 712 OTE, Los Mochis, Sinaloa, Mexico; (ENTITY) [SDNTK]

10. MOREXPRESS, S.A. DE C.V., Prol. Central ote. S/N, Tapachula, Chiapas 30700, Mexico; Octava Sur No. 122, Col. San Sebastian, Tapachula, Chiapas 30700, Mexico; Miramar No. 860–1, Zona Centro, Ensenada, Baja California

22800, Mexico; Guadalajara, Jalisco, Mexico; Hermosillo, Sonora, Mexico; Culiacan, Sinaloa, Mexico; R.F.C. MEX990209346 (Mexico); (ENTITY) [SDNTK]

Individuals

1. BELTRAN LEYVA, Hector (a.k.a. RIVERA MUNOZ, Alonso; a.k.a. BELTRAN LEYVA, Mario Alberto); Mexico; DOB 01 Jan 1960; POB Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

2. BELTRAN LEYVA, Alfredo (a.k.a. BELTRAN LEYVA, Hector Alfredo); Mexico; DOB 21 Jan 1971; Alt. DOB 15 Feb 1951; POB La Palma, Badiriguato, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; SSN 604–26–2627 (United States); (INDIVIDUAL) [SDNTK]

3. LABORIN ARCHULETA, Clara Elena, Mexico; DOB 19 Feb 1964; POB Agua Prieta, Sonora, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. LAAC640219MSRBRL06 (Mexico); (INDIVIDUAL) [SDNTK]

4. DE ICAZA LOZANO, Alejandro, c/o ILC EXPORTACIONES, S. DE R.L. DE C.V., Mexico, Distrito Federal, Mexico; Club de Golf No. 18, Casa No. 2, Conjunto Residencial Club Vista, La Atizapan de Zaragoza, Estado de Mexico, Mexico; DOB 22 Jan 1953; POB Distrito Federal, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. IALA530122HDFCZL08 (Mexico); (INDIVIDUAL) [SDNTK]

5. GUTIERREZ BARBOZA, Maureen Patricia, c/o ILC EXPORTACIONES, S. DE R.L. DE C.V., Mexico, Distrito Federal, Mexico; Mexico; DOB 11 Jun 1972; POB Carmen Central San Jose, Costa Rica; Citizen Costa Rica; Nationality Costa Rica; Cedula No. 108390780 (Costa Rica); (INDIVIDUAL) [SDNTK]

6. LOMELIN MARTINEZ, Arturo, c/o ILC EXPORTACIONES, S. DE R.L. DE C.V., Mexico, Distrito Federal, Mexico; DOB 30 Jun 1947; POB Mexico, Distrito Federal, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. LOMA470630HGTMRR08 (Mexico); (INDIVIDUAL) [SDNTK]

7. BOLANOS VITAL, Raul, c/o ILC EXPORTACIONES, S. DE R.L. DE C.V., Mexico, Distrito Federal, Mexico; DOB 26 Dec 1962; POB Mexico, D.F., Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

8. BARROSO DEGOLLADO, Javier, c/o ILC EXPORTACIONES, S. DE R.L. DE C.V., Mexico, Distrito Federal, Mexico; DOB 26 Jul 1950; POB Mexico, D.F., Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

9. RUBIO ZAGA, Jesus Roman, c/o ILC EXPORTACIONES, S. DE R.L. DE C.V., Mexico, Distrito Federal, Mexico; DOB 28 Aug 1973; POB Coyoacan, Distrito Federal, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. RUZJ730828HDFBGS08 (Mexico); (INDIVIDUAL) [SDNTK]

10. MARTINEZ CANTABRANA, Cesar (a.k.a. MARTINEZ CANTABRANA, Cesar Alejandro); c/o ILC EXPORTACIONES, S. DE R.L. DE C.V., Mexico, Distrito Federal, Mexico; DOB 27 Oct 1968; POB Xochimilco, Distrito Federal, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. MACC681027HDFRNS03 (Mexico); (INDIVIDUAL) [SDNTK]

11. ZERMENO BELTRAN, Guillermo, c/o FABRIDIESEL, Los Mochis, Sinaloa, Mexico; DOB 20 Dec 1977; POB Mexico; Citizen Mexico; Nationality Mexico; R.F.C. ZEBG771220–PE6 (Mexico); (INDIVIDUAL) [SDNTK]

12. BELTRAN SANCHEZ, Rosario, c/o FABRIDIESEL, S.A. DE C.V., Los Mochis, Sinaloa, Mexico; DOB 05 Oct 1952; POB Los Mochis, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

13. ZERMENO BELTRAN, Patricia, c/o FABRIDIESEL, S.A. DE C.V., Los Mochis, Sinaloa, Mexico; DOB 25 May 1975; POB Los Mochis, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

14. LOPEZ GRAYEB, Leopoldo (a.k.a. LOPEZ GRAYEB, Leopoldo Antonio); c/o SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o REPRESENTACIONES INTUR, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o PV STAR, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; California y Ohio #4123, Chihuahua, Chihuahua, Mexico; Avenida California #4123, Fraccionamiento Quintas Del Sol, Chihuahua, Chihuahua, Mexico; 10660 Parkview Circle, El Paso, TX 79935, United States; Ohio No. 4123, Col Quintas Del Sol, Chihuahua, Chihuahua 31214, Mexico; DOB 13 Sep 1937; POB Xalapa, Veracruz, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. LOGL370913HVZPRP01 (Mexico); R.F.C. LOGL37091322A (Mexico); SSN 636–24–0389 (United States); (INDIVIDUAL) [SDNTK]

15. PORTILLO TOLENTINO, Rodolfo, c/o SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; Fernando De Borja #509, Chihuahua, Chihuahua 31240, Mexico; DOB 04 Nov 1945; POB Aquiles Serdan, Chihuahua, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. POTR451104HCHRLD02 (Mexico); R.F.C. POTR451104G26 (Mexico); (INDIVIDUAL) [SDNTK]

16. LOPEZ FERNANDEZ, Noemi (a.k.a. LOPEZ FERNANDEZ, Nohemi; a.k.a. LOPEZ FERNANDEZ DE GORTARI, Noemi; a.k.a. LOPEZ DE DE GORTARI, Noemi); c/o SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o REPRESENTACIONES INTUR, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o ESTUDIOS Y PROYECTOS INTEGRALES DEL NORTE, S.C., Chihuahua, Chihuahua, Mexico; 3210 Calle Michigan, Fraccionamiento Quintas del Sol, Chihuahua, Chihuahua, Mexico; DOB 05 Oct 1966; POB Chihuahua, Chihuahua, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. LOFN661005MCHPRH08 (Mexico); (INDIVIDUAL) [SDNTK]

17. LOPEZ FERNANDEZ, Manuel (a.k.a. LOPEZ FERNANDEZ, Juan Manuel); c/o SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o REPRESENTACIONES INTUR, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o GRUPO STA CHIHUAHUA, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o COMERCIALIZADORA ITAKA, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; 4123 Avenida California, Fraccionamiento Quintas Del Sol, Chihuahua, Chihuahua, Mexico; Calle Ohio 3200, Chihuahua, Chihuahua, Mexico; DOB 19 Jan 1972; POB Chihuahua, Chihuahua, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. LOFJ720119HCHPRN03 (Mexico); R.F.C. LOFJ720119–CR9 (Mexico); (INDIVIDUAL) [SDNTK]

18. DE GORTARI LOYOLA, Federico, c/o REPRESENTACIONES INTUR, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; c/o ESTUDIOS Y PROYECTOS INTEGRALES DEL NORTE, S.C., Chihuahua, Chihuahua, Mexico; c/o GRUPO STA CHIHUAHUA, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; 3210 Calle Michigan, Fraccionamiento Quintas Del Sol, Chihuahua, Chihuahua, Mexico; DOB 10 Apr 1962; POB Culiacan, Sinaloa, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. GOLF620410HSLRYD08 (Mexico); R.F.C. GOLF–620610–M61 (Mexico); (INDIVIDUAL) [SDNTK]

19. VILLALOBOS ALVARADO, Juan Pablo, c/o PV STAR, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; Calle Cedro No. 804, Chihuahua, Chihuahua, Mexico; DOB 14 Mar 1960; POB Chihuahua, Chihuahua, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. VIAJ600314HCHLLN00 (Mexico); (INDIVIDUAL) [SDNTK]

20. BARRIO REZA, Jorge Luis, c/o SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; Calle Septima No. 1401, Villa Juarez,

Chihuahua, Chihuahua, Mexico; DOB 31 Oct 1954; POB Chihuahua, Chihuahua, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. BARJ541031HCHRZR06 (Mexico); (INDIVIDUAL) [SDNTK]

21. HUERTA RAMOS, Manuel (a.k.a. HUERTA RAMOS, Jesus Manuel); c/o SERVICIO AEREO LEO LOPEZ, S.A. DE C.V., Chihuahua, Chihuahua, Mexico; Sabino #804, Chihuahua, Chihuahua 31160, Mexico; DOB 26 Jun 1960; POB Juarez, Chihuahua, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. HURJ600626HCHRMS03 (Mexico); (INDIVIDUAL) [SDNTK]

22. MORENO PEREZ, Felipe, c/o MOREXPRESS, S.A. DE C.V., Tapachula, Chiapas, Mexico; DOB 05 Dec 1964; POB Tapachula, Chiapas, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. MOPF641205HCSRRL04 (Mexico); C.U.R.P. MOPF641205HCSRRL12 (Mexico); (INDIVIDUAL) [SDNTK]

Dated: December 3, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–29438 Filed 12–9–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to system of records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''The Revenue Program—Billing and Collections Records—VA'' (114VA16) as set forth in the **Federal Register** 69 FR 4205 and as amended in 70 FR 55207. VA is amending the system of records by revising the Categories of Records in the System.

DATES: Comments on the amendment of this system of records must be received no later than January 11, 2010. If no public comment is received, the amended system will become effective January 11, 2010.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at: *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Stephania H. Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: The Categories of Records in the System is being amended to add litigation or potential litigation, including a third-party tortfeasor, workers compensation, or no-fault automobile insurance cases.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: November 13, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

Notice of Amendment to System of Records

The system of records identified as 114VA16 ''The Revenue Program—Billing and Collections Records—VA,'' published at 67 FR 41573, June 18, 2002, and amended at 69 FR 4205, January 28, 2004, 70 FR 55207, September 20, 2005, and 73 FR 13280, March 12, 2008, is revised to amend the categories of records in the system as follows:

114VA16

SYSTEM NAME:

The Revenue Program—Billing and Collections Records—VA.

PURPOSE(S):

The records and information are used for the billing of, and collections from, a third party payer, including insurance companies, other Federal agencies, or foreign governments, for medical care or services received by a veteran for a nonservice-connected condition or from a first party veteran required to make co-payments. The records and information are also used for the billing of and collections from other Federal agencies for medical care or services received by an eligible beneficiary. The data may be used to identify or verify insurance coverage of a veteran or veteran's spouse prior to submitting claims for medical care or services. The data may be used to support appeals for non-reimbursement of claims for medical care or services provided to a veteran. The data may be used to enroll health care providers with health plans and VA's health care clearinghouse in order to electronically file third party claims. For the purposes of health care billing and payment activities to and from third party payers, VA will disclose information in accordance with the legislatively-mandated transaction standard and code sets promulgated by the United States Department of Health and Human Services (HHS) under the Health Insurance Portability and Accountability Act (HIPAA).

The data may be used to make application for a National Provider Identifier (NPI), as required by the HIPAA Administrative Simplification Rule on Standard Unique Health Identifier for Healthcare Providers, 45 CFR Part 162, for all health care professionals providing examination or treatment within VA health care facilities, including participation in pilot testing of NPI enumeration system by the Centers of Medicare and Medicaid Services (CMS). The records and information may be used for statistical analyses to produce various management, tracking and follow-up reports, to track and trend the reimbursement practices of insurance carriers, and to track billing and collection information. The data may be used to support, or in anticipation of supporting, reimbursement claims from non-VA health care providers or their agents. The data may be used to support, or in anticipation of supporting, reimbursement claims from academic affiliates with which VA maintains a business relationship.

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

7. Records of charges related to patient care that are created in anticipation of litigation in which the United States is a party or has an interest in the litigation or potential litigation, including a third-party tortfeasor, workers compensation, or no-fault automobile insurance cases. Such

records are not subject to disclosure under 5 U.S.C. 552a(d)(5).

* * * * *

[FR Doc. E9–29375 Filed 12–9–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
December 10, 2009

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1 and Parts 2, 4, 7, et al. Federal Acquisition Regulations; Final Rules and Small Entity Compliance Guide

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009–0001, Sequence 9]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–38; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–38. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov*.

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–38 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–38

Item	Subject	FAR case	Analyst
I	Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees.	2009–017	Cundiff.
II	Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts	2006–026	Jackson.
III	Internet Protocol Version 6 (IPv6)	2005–041	Woodson.
IV	Federal Food Donation Act of 2008 (Pub. L. 110–247)	2008–017	Jackson.
V	Postretirement Benefits (PRB), FAS 106	2006–021	Chambers.
VI	Travel Costs	2006–024	Chambers.
VII	Technical Amendments		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–38 amends the FAR as specified below:

Item I—Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2009–017)

This final rule amends the FAR to delete FAR subpart 22.16 and the corresponding FAR clause at 52.222–39, Notification of Employee Rights Concerning Payment of Union Dues or Fees, which implemented Executive Order 13201, of February 17, 2001, of the same title. Executive Order 13201 required contractors to post a notice informing employees of their rights concerning payment of union dues or fees and detailed that employees could not be required to join unions or maintain membership in unions to retain their jobs. Executive Order 13496, of January 30, 2009, Notification of Employee Rights under Federal Labor Laws, revoked Executive Order 13201.

Item II—Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts (FAR Case 2006–026)

This final rule amends the FAR at parts 4, 8, 13, 16, 32, and 52 by restricting the use of the Governmentwide commercial purchase card as a method of payment for offerors with debt subject to the Treasury Offset Program (TOP). This final rule facilitates the collection of delinquent debts owed to the Government by requiring contracting officers to determine whether the Central Contractor Registration (CCR) database indicates that the contractor has delinquent debt that is subject to collection under the TOP. If a debt flag indicator is found in the CCR database, then the Governmentwide commercial purchase card shall not be authorized as a method of payment. The contracting officer is required to check for the debt flag indicator at the time of contract award or order issuance or placement. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) deleted the requirement to check CCR for the indicator before exercising an option. Purchases and orders at or below the micro-purchase threshold are exempt from verification in the CCR database as to whether the contractor has a debt flag indicator subject to collection under the TOP.

Item III—Internet Protocol Version 6 (IPv6) (FAR Case 2005–041)

This final rule adopts the proposed rule published in the **Federal Register** at 71 FR 50011, August 24, 2006, as a final rule with minor changes. This final rule amends FAR parts 7, 11, 12, and 39 to require Internet Protocol Version 6 (IPv6) compliant products be included in all new information technology (IT) procurements requiring Internet Protocol (IP).

IP is one of the primary mechanisms that define how and where information moves across networks. The widely-used IP industry standard is IP Version 4 (IPv4). The Office of Management and Budget (OMB) Memorandum M–05–22, dated August 2, 2005, requires all new IT procurements, to the maximum extent practicable, to include IPv6 compliant products and standards. In addition, OMB Memorandum M–05–22 provides guidance to agencies for transitioning to IPv6.

Item IV—Federal Food Donation Act of 2008 (Pub. L. 110–247) (FAR Case 2008–017)

This rule adopts as final, with no changes, the interim rule published in the **Federal Register** at 74 FR 11829 on March 19, 2009. This rule implements the Federal Food Donation Act of 2008 (Pub. L. 110–247), which encourages executive agencies and their contractors, in contracts for the provision, service, or

sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

The contracting officer is required to insert the clause at FAR 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations, in solicitations and contracts greater than $25,000 for the provision, service, or sale of food in the United States. Contractors would only be impacted if they decided to donate the excess food; they would bear all the costs of donating the excess food. The Act would extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

Item V—Postretirement Benefits (PRB), FAS 106 (FAR Case 2006–021)

Currently FAR 31.205–6(o) allows contractors to choose among three different accounting methods for PRB costs; pay-as-you-go (cash basis), terminal funding, and accrual basis using generally accepted accounting principles by applying Statement 106 of Financial Accounting Standards (FAS 106). The FAR also requires that any accrued PRB costs be paid to an insurer or trustee. This final rule amends the FAR to permit the use of Internal Revenue Code sections 419 and 419A contribution rules as an alternative method of determining the amount of accrued PRB costs on Government cost-based contracts.

Item VI—Travel Costs (FAR Case 2006–024)

This final rule amends the FAR to change the travel cost principle (FAR 31.205–46) to ensure a consistent application of the limitation on allowable contractor airfare costs. This rule applies the standard of the lowest fare available to the contractor. This rule takes notice that contractors frequently obtain fares that are lower than those available to the general public as a result of direct negotiation. The cost principle is clarified by removing the terms ''coach or equivalent'' and ''standard'' from the description of the classes of allowable airfares, since these terms increasingly do not describe actual classes of airline service. Thus, even when a ''coach'' fare may be available, given the great variety of fares often available, the ''coach'' fare may not be the lowest fare available, in particular when a contractor has a negotiated agreement with a carrier.

Item VII—Technical Amendments

Editorial changes are made at FAR 6.302–2, 8.703, 15.305, 52.209–6, and 52.212–5.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-38 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-38 is effective December 10, 2009, except for Items V and VI, which are effective January 11, 2010, and Item II, which is effective February 1, 2010.

Dated: November 25, 2009.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: November 24, 2009.

David A. Drabkin,

Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: November 20, 2009.

James A. Balinskas,

Director, Contract Management Division, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. E9–28928 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 22, and 52

[FAC 2005–38; FAR Case 2009–017; Item I; Docket 2009-0040, Sequence 1]

RIN 9000–AL47

Federal Acquisition Regulation; FAR Case 2009–017, Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to delete FAR Subpart 22.16 and the corresponding clause at FAR 52.222–39, Notification of Employee Rights Concerning Payment of Union Dues or Fees, which implemented Executive Order (E.O.) 13201 of February 17, 2001, of the same title. E.O. 13201 required contractors to post a notice informing employees of their rights concerning payment of union dues or fees and detailed that employees could not be required to join unions or maintain membership in unions to retain their jobs. E.O. 13201 was revoked by E.O. 13496 of January 30, 2009, Notification of Employee Rights Under Federal Labor Laws.

DATES: *Effective Date*: December 10, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2009–017.

SUPPLEMENTARY INFORMATION:

A. Background

On January 30, 2009, the President issued E.O. 13496 (74 F.R. 6107, February 4, 2009) which requires contractors to post a notice informing employees of their rights under Federal labor laws, including the National Labor Relations Act, 29 U.S.C. 151 *et seq.* This Act encourages collective bargaining, allowing workers to freely associate, self-organize, and designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. E.O. 13496 revoked the prior E.O. 13201. The new E.O. sets forth a different policy that will be included in the FAR as a separate rule in conjunction with guidance from the Secretary of Labor on the appropriate content for a replacement notice to employees. Therefore, the language at FAR Subpart 22.16 that prescribes the policy and procedures of E.O. 13201 is no longer applicable.

This final rule amends the FAR to delete FAR Subpart 22.16 in its entirety as well as the corresponding clause at FAR 52.222–39. FAR clauses 52.212–5 and 52.244–6 are also amended to delete any references to the revoked E.O. 13201 and FAR clause 52.222–39. The Department of Labor rescinded its

implementing regulations on March 30, 2009 (74 F.R. 14045).

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR parts 2, 22, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–38, FAR case 2009–017), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 2, 22, and 52

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101 in paragraph (b)(2), in the definition ''United States'', by removing paragraph (5), and redesignating paragraphs (6) through (9) as paragraphs (5) through (8), respectively.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.16—[Removed and reserved]

■ 3. Remove and reserve subpart 22.16.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing paragraph (b)(26), and redesignating paragraphs (b)(27) through (b)(43) as (b)(26) through (b)(42), respectively;

■ c. Removing and reserving paragraph (e)(1)(vii); and

■ d. In Alternate II by—

■ i. Revising the date of the alternate; and

■ ii. Removing paragraph (e)(1)(ii)(G), and redesignating paragraphs (e)(1)(ii)(H) through (e)(1)(ii)(N) as paragraphs (e)(1)(ii)(G) through (e)(1)(ii)(M), respectively.

■ The revised text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DEC 2009)

* * * * *

Alternate II (DEC 2009). * * *

* * * * *

■ 5. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(vi) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (DEC 2009)

(a) * * *

(2) * * *

(vi) 52.244–6, Subcontracts for Commercial Items (DEC 2009).

* * * * *

52.222–39 [Removed and reserved]

■ 6. Remove and reserve section 52.222–39.

52.244–6 [Amended]

■ 7. Amend section 52.244–6 by revising the date of the clause to read ''(DEC 2009)''; and by removing and reserving paragraph (c)(1)(vii).

[FR Doc. E9–28929 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 8, 13, 16, 32, and 52

[FAC 2005–38; FAR Case 2006–026; Item II; Docket 2009–0041, Sequence 1]

RIN 9000–AK87

Federal Acquisition Regulation; FAR Case 2006–026, Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to restrict the use of the Governmentwide commercial purchase card as a method of payment for offerors with debts subject to the Treasury Offset Program.

DATES: *Effective Date*: February 1, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2006–026.

SUPPLEMENTARY INFORMATION:

A. Background

The Debt Collection Improvement Act of 1996 and other statutes provide the tools for administering a centralized program for the collection of delinquent, non-tax and tax debts. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is charged with implementing the Government's delinquent debt collection program. Since 1996, FMS has collected more than $24.4 billion in delinquent debt. In fiscal year 2006, collections of delinquent debt remained at a constant $3.1 billion. To collect delinquent debts owed to Federal agencies and States, FMS uses the Treasury Offset Program (TOP). Information on TOP is available at *http://fms.treas.gov/debt/index.html.* TOP uses both ''offsets'' and ''continuous levies'' to collect

delinquent debts. Offset is a process whereby Federal payments are reduced or ''offset'' to satisfy a person's overdue Federal debt, child support obligation, or State tax debt. A payee's name and taxpayer identification number are matched against a Treasury/FMS database of delinquent debtors for automatic offset of funds. Offset funds are then used to satisfy payment of the delinquent debt to the extent allowed by law.

Under the continuous levy program, delinquent Federal tax debts are collected by levying non-tax payments until the debt is satisfied, as authorized by the 1997 Taxpayer Relief Act. The continuous levy program includes levy of some vendor payments (Treasury disbursed and non-Treasury disbursed payments), Federal employee salary payments, the Office of Personnel Management retirement payments, and Social Security benefit payments. Continuous levy is accomplished through a process almost identical to that of offset. FMS matches delinquent debtor data with payment record data for automated collection of the debt at the time of payment, after the delinquent taxpayer has been afforded due process.

FMS is currently unable to offset or apply a continuous levy to payments made to contractors with delinquent debts when the Governmentwide commercial purchase card is used as the method of payment. When the Governmentwide commercial purchase card is used as the method of payment, the Government does not make a direct payment to the contractor. Instead, the Acquiring Bank submits the payment to the contractor's bank account. Acquiring Banks (also known as Merchant Banks) are the banks that do business with merchants who accept charge cards. A merchant has an account with this bank and each day deposits the value of the day's charge card sales. Acquirers buy (acquire) the merchant's sales slips and credit the ticket's value to the merchant's account. The GSA SmartPay® contracted banks are issuing banks and do not directly pay the merchants.

VISA and Master Card are associations, not banks. VISA and Master Card are retail electronic payments networks and global financial services brands. They facilitate global commerce through the transfer of information among financial institutions, merchants, consumers, businesses, and Government entities. To assess the significance of the problem, FMS and VISA matched VISA payments for Governmentwide purchase card transactions for one year. As a result of the match, FMS determined that approximately $73.5 million of delinquent debts subject to collection under TOP were not collected because the debtors were paid using the Governmentwide commercial purchase card. The individual payments that otherwise would have been collected were all in excess of the micro-purchase threshold.

To help increase the collection of delinquent debts owed to the Government, the rule amends the FAR to require contracting officers to determine whether the Central Contractor Registration (CCR) indicates that the contractor has delinquent debt that is subject to collection under the TOP. If a debt indicator is found, the Governmentwide commercial purchase card shall not be authorized as a method of payment. The contracting officer is required to check for the flag at the time of contract award or order placement or issuance. The rule also amends the applicable Governmentwide commercial purchase card payment FAR clause at 52.232–36 to advise contractors that the Governmentwide commercial purchase card is not authorized as a method of payment if a debt indicator is included in the CCR for the contractor. The proposed rule included the requirement for the contracting officer to check CCR prior to option exercise, but has been removed by the Councils in the final rule. The Councils removed the requirement to check CCR prior to option exercise because the proposed rule language was considered to be a change to the requirement for exercising an option, which if the method of payment was changed, would result in a contract change outside the scope of exercising an option. This rule will not apply to individual travel charge cards or centrally billed accounts for travel/transportation services.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 74255, December 31, 2007. The comment period closed on February 29, 2008. The Councils received comments from seven respondents, one of which was inadvertently sent in error and belonged to a National Oceanic Atmospheric Administration proposed rule that followed this rule in the FRN entitled ''Pacific Halibut Fisheries''.

The Councils have made the following changes to the proposed rule:

a. FAR 4.1103(a)(3) of the proposed rule has been modified to change the sentence structure from ''except when payment by the Governmentwide commercial purchase card is contemplated (see 32.1108 (b)(2)'') to ''except when use of the Governmentwide commercial purchase card is contemplated as a method of payment. (See 32.1108(b)(2))''.

b. FAR 8.402(g) was added to the rule to clarify that this rule does not apply to orders placed at or below the micro-purchase threshold.

c. FAR 13.201(h) was not in the proposed rule and has been added as follows: ''When using the Governmentwide commercial purchase card as a method of payment, purchases at or below the micro-purchase threshold are exempt from verification in the Central Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP)'' to make it very clear that purchases under the micro-purchase threshold are exempt from checking the CCR database for a delinquent debt flag. This change from the proposed rule is deemed necessary because of the repeated public comments received on the issue and to provide clarity that purchases under the micro-purchase threshold are exempt from checking the CCR database for the delinquent debt flag.

d. FAR 16.505(a)(11) was added to the rule to clarify that this rule does not apply to orders placed at or below the micro-purchase threshold.

e. FAR 17.207(f) of the proposed rule which included adding new subparagraphs (1) and (2) was reinstated as currently in the FAR.

f. FAR 32.1108(b)(2)(i) of the proposed rule has been modified to delete ''program'' as it was duplicated in the proposed FAR language. FAR 32.1108(b)(2)(i) was also amended in the final rule to require the contracting officer to check for the debt flag indicator only if payment by the Governmentwide purchase card is anticipated and the contract or order is above the micro-purchase threshold. The requirement was removed to check the CCR database for the indicator prior to option exercise.

g. FAR 32.1108(b)(2)(ii) of the proposed rule has been modified to add language informing contracting officers that contracts to be paid by purchase card must either include FAR 52.232–33 or FAR 52.232–34, so that in the event that payment cannot be made by purchase card, the contractor is aware of the method of payment and the requirements thereof, *i.e.*, active CCR status.

h. The last sentence of FAR 32.1108(b)(2)(ii) of the proposed rule which read, ''Contracting officers shall not use the presence of the delinquent debt indicator to exclude a contractor from receipt of the contract, order, or exercised option'' is renumbered to be

FAR 32.1108(b)(2)(iii) and has been modified to correct grammar and delete the requirement to check CCR for the indicator when exercising an option.

i. FAR 32.1108(b)(2)(iii) of the proposed rule has been modified to correct grammar and reflect the new subparagraph ''iv.''

j. Language was added at FAR 32.1110(d) of the rule to inform contracting officers that contracts to be paid by purchase card must either include FAR 52.232–33 or FAR 52.232–34, so that in the event that payment cannot be made by purchase card, the contractor is aware of the method of payment and the requirements thereof, *i.e.*, active CCR status.

k. FAR 52.212–5 was added to the rule in order to change the date of FAR 52.232–36 at paragraph (b)(41). The date of FAR 52.212–5 itself was also changed.

l. In the proposed rule at FAR 52.232–36(a)(2), the clause read ''The Governmentwide commercial purchase card is not authorized as a method of payment when the Central Contractor Registration (CCR) indicates that the Contractor has delinquent debt...'' In the final rule the word ''when'' is being replaced with ''during any period'' so that the beginning of FAR 52.232–36 (a)(2) now reads as follows: ''The Governmentwide commercial purchase card is not authorized as a method of payment during any period the Central Contractor Registration (CCR) indicates that the Contractor has delinquent debt...'' The change from ''when'' in the proposed rule to ''during any period'' in the final rule is done for clarification to make it clear that the contracting officer shall not authorize the use of the commercial purchase card for payment at any time when the CCR registration shows that the contractor has delinquent debt that is subject to collection under TOP.

The basis for each change and analysis of all public comments follows.

1. Comment: One respondent commented that this rule should exclude Government card purchases made under the simplified acquisition procedures because non-contracting officers will not consistently check the CCR database for the debt collection flag.

Response: The FAR change is applicable to all acquisitions that include the CCR clauses (FAR 52.204–7 or FAR 52.212–4(t)). The only exclusions are in FAR 4.1102. Forcing personnel that have been designated as cardholders, but are not contracting officers, to perform the check for the debt flag indicator in the CCR database could be administratively burdensome and may potentially curtail card usage. When the Governmentwide commercial purchase card is used as a method of payment for purchases above the micro-purchase threshold then contracting officers (COs) are required to check in the CCR database to see if there is a delinquent debt flag identified for the contractor. This has been further clarified with the added language in FAR 13.201(h). In addition, language has been added to the FAR text at FAR 8.402 and FAR 16.505, clarifying that when placing orders at or below the micro-purchase threshold, CCR does not have to be checked for the debt flag indicator.

2. Comment: One respondent commented that the proceeds of simplified acquisition procedures are unlikely to make a serious dent in the indebtedness of businesses.

Response: The $73.5 million is a yearly total for the Governmentwide commercial purchase cards only and is considered significant. This remedy is directed specifically at Government contractors who owe delinquent debt, yet continue to do business with the Government. Collections of $73.5 million per year represent a significant portion of the debt owed by this population. In addition, the collection of the $3.1 billion is being pursued utilizing other mechanisms.

3. Comment: Five respondents recommended this rule be applicable only to purchases above the micro-purchase threshold. One questioned whether the requirement to check CCR was applicable to orders placed on GSA Advantage or DoD eMall by a purchase cardholder who is not a warranted contracting officer.

Response: The Councils agree that purchases at or below the micro-purchase threshold are excluded from the requirement to check the CCR database for the debt flag indicator when using the Governmentwide commercial purchase card as a method of payment. FAR 13.201(h) has been added to make it very clear that the CCR database is not required to be checked for the delinquent debt flag whenever the purchase is below the micro-purchase threshold. In addition, language has been added at FAR 8.402 and FAR 16.505, to make it clear that the CCR database is required to be checked for the delinquent debt flag whenever the order is above the micro-purchase threshold when the Governmentwide commercial purchase card is used as a method of payment by a contracting officer.

4. Comment: One respondent stated that ''it would also be nice if GSA contracts specify that payments may not be made through the charge card for existing and new contracts.''

Response: The responsibility to include the FAR clause at 52.232–36 is whenever the purchase card will be used as a method of payment under a contract as outlined in the prescription in FAR 32.1110(d). The responsibility to check the CCR database for GSA contractors with a delinquent debt flag is a requirement and a duty of the GSA contracting officer prior to award of a contract or issuance or placement of an order. It is the responsibility of the ordering agency/office contracting officer to check the CCR database for contractors with a delinquent debt flag prior to placing an order against a GSA schedule contract when the purchase is above the micro-purchase threshold and when the Governmentwide commercial purchase card is used as the method of payment.

5. Comment: One respondent expressed concern about the burden on the contracts/procurement folks of the Government and stated that if the Government really wanted to solve the problem the Government would automate the VISA/Governmentwide commercial purchase card system to perform the debt collection offset.

Response: It is within the discretion of the Government to assign duties to Government employees in order to achieve the Government's policies.

The Federal Contractor Tax Compliance (FCTC) task force and a purchase card subgroup extensively studied and determined that blocking Federal payment to delinquent contractors that way is not an option. According to industry members, the current commercial Merchant Category Code blocking process and authorization and transactions settlement processes do not have the capabilities to block transactions for individual vendors. Therefore blocking transactions at the point of sale for merchants that are delinquent on their taxes is not feasible. Currently there are no commercial systems available that have the technological capability to subject specific purchase card payments to the Federal Payment Levy Program (FPLP). Therefore, it has been determined that it is not currently possible or feasible to implement automating the offset of Governmentwide commercial purchase card payments within the VISA/Governmentwide Purchase Card system.

6. Comment: One respondent questioned whether transactions below the micro-purchase threshold were studied.

Response: The Financial Management Service within the U.S. Department of

Treasury did study those transactions below the micro-purchase threshold level and the Program Director of the GSA Office of Charge Card Management has stated that while purchases below the micro-purchase threshold represent a large percentage of the volume of purchase card transactions, they represent a relatively small percentage of the dollars expended and not worthy of the administrative burden of checking the CCR database for the debt collection flag.

7. Comment: One respondent questioned whether changing the payment method would put an awkward burden on the front-line folks.

Response: The requirement to check the CCR database at contract award or order placement or issuance, should be completed in advance so that the payment mechanism could be worked out between the parties. In addition, the Contractor may choose to pay their delinquent debt rather than change the payment method. If the contractor pays the debt, the debt flag will be removed from the CCR database, and this will enable the use of the Governmentwide commercial purchase card as a method of payment. Otherwise, other alternate payment methods/clauses will have to be utilized because the use of the Governmentwide commercial purchase card is prohibited as a payment method if a debt flag is identified for the contractor in the CCR database.

8. Comment: One respondent asked what the contracting officer should do if there is no CCR registration or it is inactive when a contracting officer attempts to place an order or exercise an option.

Response: The contracting officer should plan well in advance of awarding a contract or placing or issuing an order by checking the CCR database to ensure the contractor registration has not expired. If it has expired, then the contracting officer should encourage the contractor/offeror to renew their registration in CCR prior to placing the order as required by their respective contract or agreement. By now all contractors should have registered in CCR unless they were given an exception. The contracting officer for an order for which there is no CCR registration should assume the contractor was given an exception at the time of contract award and so need not worry about checking for the flag. The proposed rule requirement for the contracting officer to check CCR prior to option exercise has been removed by the Councils in the final rule.

9. Comment: One respondent asked what contracting officers are supposed to do if the instant acquisition is exempt from being registered in the CCR database.

Response: If the instant acquisition is exempt from CCR as outlined in FAR 4.1102 then the contracting officer does not have to check CCR for registration. However, if the acquisition is not exempt as prescribed by FAR 4.1102, the contracting officer must make efforts to encourage the contractor/offeror to register in CCR or the offeror will not be permitted to receive an award.

10. Comment: One respondent commented that the FAR clause at 52.232–36, Payments by Third Party, should be a required clause when payment by the purchase card is contemplated and therefore, the prescription should be modified as the clause shall be required because it is not discretionary.

Response: The Councils agree the clause is not discretionary and believe it is clear in the prescription of the clause at FAR 32.1110(d).

11. Comment: One respondent commented that the CCR database has not yet implemented the Federal Debt Flag functionality in the public search record.

Response: The CCR database has been modified to include the debt flag indicator and will be fully operational and accessible by the time this case is issued as a final rule.

12. Comment: A respondent questioned the inappropriate terms used in the preamble to the proposed rule in the statements ''instead, the processing bank for the Governmentwide commercial purchase card pays the contractor'' and ''To assess the significance of the problem, FMS and Visa, one of the processing banks...''.

The respondent asserted that the Acquiring Bank submits the payment to the contractor's bank account. The GSA SmartPay® contracted banks are issuing banks and do not directly pay the merchants. Acquiring Banks (a.k.a. Merchant Banks) are the banks that do business with merchants who accept charge cards. A merchant has an account with this bank and each day deposits the value of the day's charge card sales. Acquirers buy (acquire) the merchant's sales slips and credit the ticket's value to the merchant's account. VISA is an Association, not a bank. VISA is a retail electronic payments network and global financial services brand. It facilitates global commerce through the transfer of information among financial institutions, merchants, consumers, businesses, and Government entities.

Response: The Councils agree, with the exception that not only VISA, but Master Card also is an Association, the Background section of the proposed rule contained an erroneous statement.

13. Comment: One respondent stated that, ''Our primary objection to the proposed rule is the use of delinquent debts reported under the Treasury Offset Program as a basis for restricting use of a Governmentwide commercial purchase card as a method of payment to contractors. We believe many of the debts reported under TOP are highly inaccurate and do not satisfy the requirements of the Debt Collections Improvement Act of 1996. When the statute was enacted in 1996, it contained a requirement to notify contractors of claims established under the Act. The processes and systems established to notify contractors failed to comply with the statutory notification required. There have been many reports of cases where withholds have been taken in error and cases where advance notice of intent to withhold was not received by a responsible individual in the employ of the company.''

Response: Before a nontax debt may be submitted to the Treasury Offset Program for collection by offset, agencies must certify to Treasury that the debt is valid and that all due process requirements have been met (31 CFR 285.5(c)(6)). These due process requirements include notice and an opportunity to dispute the debt (31 U.S.C. 3716). Actual receipt of the notice by the debtor is not required provided the agency has made a reasonable attempt to notify the debtor. Debtors are afforded notice and an opportunity to dispute debts prior to an offset or levy under the Treasury Offset Program. In the case of tax debts, the notice requirements contained in the Internal Revenue Code are followed. Additionally, when an offset or levy occurs, a notice is sent to the debtor that includes contact information to address any concerns regarding the offset or levy.

14. Comment: One respondent stated that the inaccurate tax information could lead to erroneous award decisions by contracting officers.

Response: This rule does not impact contract award decisions by contracting officers. The rule precludes the use of the Governmentwide commercial purchase card as a method of payment only and does not affect the award.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only impacts the method by which a contractor can be paid when the contractor has a delinquent debt.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 4, 8, 13, 16, 32, and 52

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 8, 13, 16, 32, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 8, 13, 16, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.1103 by revising paragraph (a)(3) to read as follows:

4.1103 Procedures.

(a) * * *

(3) Need not verify registration before placing an order or call if the contract or agreement includes the clause at 52.204–7, or 52.212–4(t), or a similar agency clause, except when use of the Governmentwide commercial purchase card is contemplated as a method of payment. (See 32.1108(b)(2)).

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 3. Amend section 8.402 by adding paragraph (g) to read as follows:

8.402 General.

* * * * *

(g) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the micro-purchase threshold are exempt from verification in the Central Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

■ 4. Revise section 8.405–7 to read as follows:

8.405–7 Payment.

Agencies may make payments for oral or written orders by any authorized means, including the Governmentwide commercial purchase card (but see 32.1108(b)(2)).

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 5. Amend section 13.003 by revising paragraph (e) to read as follows:

13.003 Policy.

* * * * *

(e) Agencies shall use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable in conducting simplified acquisitions (but see 32.1108(b)(2)).

* * * * *

■ 6. Amend section 13.201 by adding paragraph (h) to read as follows:

13.201 General.

* * * * *

(h) When using the Governmentwide commercial purchase card as a method of payment, purchases at or below the micro-purchase threshold are exempt from verification in the Central Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

■ 7. Amend section 13.301 by revising the first sentence of paragraph (a) and (c)(3) to read as follows:

13.301 Governmentwide commercial purchase card.

(a) Except as provided in 32.1108(b)(2), the Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases of supplies, services, or construction. * * *

* * * * *

(c) * * *

(3) Make payments, when the contractor agrees to accept payment by the card (but see 32.1108(b)(2)).

PART 16—TYPES OF CONTRACTS

■ 8. Amend section 16.505 by adding paragraph (a)(11) to read as follows:

16.505 Ordering.

(a) * * *

(11) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the micro-purchase threshold are exempt from verification in the Central Contractor Registration (CCR) database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

* * * * *

PART 32—CONTRACT FINANCING

■ 9. Amend section 32.1108 by revising paragraph (b) to read as follows:

32.1108 Payment by Governmentwide commercial purchase card.

* * * * *

(b)(1) Written contracts to be paid by purchase card should include the clause at 52.232–36, Payment by Third Party, as prescribed by 32.1110(d). However, payment by a purchase card also may be made under a contract that does not contain the clause to the extent the contractor agrees to accept that method of payment.

(2)(i) When it is contemplated that the Governmentwide commercial purchase card will be used as the method of payment, and the contract or order is above the micro-purchase threshold, contracting officers are required to verify (by looking in the Central Contractor Registration (CCR)) whether the contractor has any delinquent debt subject to collection under the Treasury Offset Program (TOP) at contract award and order placement. Information on TOP is available at *http://fms.treas.gov/debt/index.html*.

(ii) The contracting officer shall not authorize the Governmentwide commercial purchase card as a method of payment during any period the CCR indicates that the contractor has delinquent debt subject to collection under the TOP. In such cases, payments under the contract shall be made in accordance with the clause at 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration, as appropriate (see FAR 32.1110(d)).

(iii) Contracting officers shall not use the presence of the CCR debt flag indicator to exclude a contractor from receipt of the contract award or issuance or placement of an order.

(iv) The contracting officer may take steps to authorize payment by Governmentwide commercial purchase card when a contractor alerts the contracting officer that the CCR debt flag

indicator has been changed to no longer show a delinquent debt.

* * * * *

■ 10. Amend section 32.1110 by adding a new sentence to the end of paragraph (d) to read as follows:

32.1110 Solicitation provision and contract clauses.

* * * * *

(d) * * * When the clause at 52.232–36 is included in a solicitation or contract, the contracting officer shall also insert the clause at 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232–34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration, as appropriate.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 11. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(40) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (FEB 2010)

* * * * *

(b) * * *

_____(40) 52.232–36, Payment by Third Party (FEB 2010) (31 U.S.C. 3332).

* * * * *

■ 12. Amend section 52.232–36 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

52.232–36 Payment by Third Party.

* * * * *

PAYMENT BY THIRD PARTY (FEB 2010)

(a) *General.* (1) Except as provided in paragraph (a)(2) of this clause, the Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(2) The Governmentwide commercial purchase card is not authorized as a method of payment during any period the Central Contractor Registration (CCR) indicates that the Contractor has delinquent debt that is subject to collection under the Treasury Offset Program (TOP). Information on TOP is available at *http://fms.treas.gov/debt/index.html.* If the CCR subsequently indicates that the Contractor no longer has delinquent debt, the Contractor may request the Contracting Officer to authorize payment by Governmentwide commercial purchase card.

(b) *Contractor payment request.* (1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall make payment requests through a charge to the Government account with the third party, at the time and for the amount due in accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor.

(2) When the Contracting Officer has notified the Contractor that the Governmentwide commercial purchase card is no longer an authorized method of payment, the Contractor shall make such payment requests in accordance with instructions provided by the Contracting Officer during the period when the purchase card is not authorized.

* * * * *

[FR Doc. E9–28930 Filed 12–9–09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 11, 12, and 39

[FAC 2005–38; FAR Case 2005–041; Item III; Docket 2009-0042, Sequence 1]

RIN 9000–AK57

Federal Acquisition Regulation; FAR Case 2005–041, Internet Protocol Version 6 (IPv6)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to require Internet Protocol Version 6 (IPv6) compliant products be included in all new information technology (IT) acquisitions using Internet Protocol (IP). IP is one of the primary mechanisms that define how and where information moves across networks. The widely-used IP industry standard is IP Version 4 (IPv4). The Office of Management and Budget (OMB) Memorandum M–05–22, dated August 2, 2005, requires all new IT procurements, to the maximum extent practicable, to include IPv6 capable products and standards.

DATES: *Effective Date*: December 10, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2005–041.

SUPPLEMENTARY INFORMATION:

A. Background

To guide the Federal Government in its transition to IPv6, OMB issued Memorandum M–05–22, Transition Planning for Internet Protocol Version 6, which outlined a transition strategy for agencies to follow and established the goal for all Federal agency network backbones to support IPv6 by June 30, 2008. This guidance initiated the development for an addressing mechanism to increase the amount of available IP address space and support interconnected networks to handle increasing streams of text, voice, and video without compromising IPv4 capability or network security. Such benefits offered by IPv6 include (1) A platform for innovation, collaboration, and transparency; (2) Integrated interoperability and mobility; (3) Improved security features and; (4) Unconstrained address abundance. To begin the planning, agencies can achieve valuable benefits from IPv6 using the ''IPv6 Planning Guide and Roadmap'' to begin the planning for improvement in operational efficiencies and citizen services. This direction is necessary due to the inability of IPv4 to meet the Government's long-term business needs because of limited robustness, scalability, and features. In coordination with OMB, the National Institute of Standards and Technology (NIST) developed additional standards and testing infrastructures to support agency plans for IPv6 adoption. The U.S. Government version 6 (USGv6) profile defines effective dates for its mandatory requirements so as to provide vendors a 24-month lead time to implement and test. The earliest effective date in version 1 of the profile is July, 2010. For NIST IPv6 information, visit *http://www.antd.nist.gov/usgv6.*

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 50011, August 24, 2006, to amend the FAR to ensure that all new IT acquisitions using Internet Protocol are IPv6 compliant. Proactive integration of IPv6 requirements into Federal contracts may reduce the costs and complexity of transition by ensuring that Federal applications can operate in an IPv6

environment without costly upgrades. The final rule—

• Adds a new paragraph (iii) at FAR 7.105(b)(4) to require a discussion of Internet Protocol compliance, as required by FAR 11.002(g), for information technology acquisitions using Internet Protocol;

• Adds a new paragraph (g) to FAR 11.002 specifying that agency requirement documents must include the appropriate IPv6 compliance requirements in accordance with the Agency's Enterprise Architecture, unless a waiver to the use of IPv6 has been granted; and

• Adds a new paragraph (e) to both FAR 12.202 and FAR 39.101 stating that agencies must include the appropriate Internet Protocol compliance requirements consistent with FAR 11.002(g) regarding information technology acquisitions using Internet Protocol.

The Councils received public comments from six sources in response to the proposed rule. A discussion of the comments is provided below.

1. *FAR 7.105, Contents of written acquisition plans.*

a. A total of 5 comments were received regarding this section recommending editorial revisions to clarify the requirement, including adding a reference to OMB Memorandum M–05–22, Transition Planning for Internet Protocol Version 6 (IPv6), and indicating that the requirement only applies to IT acquisitions using Internet Protocol.

Response: The Councils have clarified the rule by: adding the basic requirement for IPv6 compliance in FAR 11.002(g) along with a reference to the OMB memorandum; moving the acquisition planning requirement to FAR 7.105(b)(4)(iii) to ensure that it applies to both contracts and orders; and adding cross references to FAR 11.002(g), in FAR 12.202(e) and FAR 39.101(e).

b. Comment: A respondent commented that several actions outlined in the Chief Information Officers (CIO) Council IPv6 guidance are not yet implemented and their absence makes it very difficult to adopt new FAR clauses. The Government has interchanged terminologies ''IPv6 compliant and ''IPv6 capable.'' Without a clear standard with which to measure technologies, it is possible that some Government procurements could be IPv6 capable, but not IPv6 compliant. To require compliance at the contract level before development and adoption of a clear standard is premature.

Another respondent commented that FAR 7.105(b)(4)(ii)(A)(*2*) states that the reader can find ''additional requirements'' for IPv6 at the CIO Council Web site but the ''additional requirements'' are not readily accessible. There are a number of links but none concern IPv6.

Response: As stated in OMB Memorandum M–05–22, the Federal CIO Council Architecture and Infrastructure Committee issued additional IPv6 transition guidance in February 2006 (ref: *www.cio.gov/documents/IPv6__Transition__Guidance.doc*). In addition, the National Institute for Standards and Technology (NIST) has developed a standard to address IPv6 compliance for the Federal Government. The US Government standards for Internet Protocol Version 6 (IPv6) are located in NIST Special Publication 500–267 at *www.antd.nist.gov/usgv6/profile.html*. This final rule retains a reference to OMB Memorandum M–05–22.

2. *FAR 12.202, Market research and description of agency need. Several comments were received regarding this section.*

a. Comment: One respondent commented that considering the requirements of FAR 12.202(b), why is the reminder at FAR 12.202(e) necessary? It seems highly unlikely that the agency would conduct market research or describe agency need and forget such an important element.

Response: The Councils believe that it is important to remind contracting officers that when describing agency needs, requirements documents for IT using Internet Protocol must be IPv6 compliant. However, the final rule has been revised to establish the basic compliance requirement at FAR 11.002(g) and cross reference it in FAR 12.202 and FAR 39.101 instead of repeating the language in these latter two sections.

b. Comment: The respondent commented that the reference to Web sites is inconsistent regarding ''additional requirements.'' One refers to the CIO Web site and the other to OMB's Webpage containing OMB Memorandum M–05–22.

Response: This final rule has been clarified as indicated in the response in paragraph 1.

c. Comment: One respondent recommended that FAR 12.202(e) be changed to read: ''Requirements documents for information technology solutions must include Internet Protocol Version 6 (IPv6) capability as outlined in the OMB Memorandum M–05–22, Transition Planning for Internet Protocol Version 6 (IPv6), and additional requirements for IPv6 at *http://www.cio.gov/IPv6*. Market research shall include the United States certified test suites, testing methodologies that do not include proprietary vendor solutions and show evidence of being a compliant product or service. Information on compliant products and services are found at *http://www.cio.gov/IPv6*.''

Response: The final rule has been clarified at FAR 12.202(e) to indicate that requirements documents must include the appropriate Internet Protocol compliance requirements in accordance with FAR 11.002(g).

3. *FAR 39.101, Policy.* Several respondents suggested revisions to FAR 39.101(e) to clarify the waiver process and indicated that the term ''information technology solution,'' as used in this subpart and throughout the final rule, was not defined and recommended that a definition be added.

Response: The Councils have revised the final rule to delete the questioned term and instead have adopted the self-defining ''information technology using Internet Protocol.'' In addition, waiver language has been clarified at FAR 11.002, indicating that IPv6 compliance requirements are outlined in the agency's IPv6 transition plan.

4. *General comments.* Five comments were submitted regarding the general requirements of this final rule.

a. Comment: One respondent commented that the proposed rule is not required, as it is a technical requirement, not an acquisition related mandate. The respondent also considers the proposed rule to be redundant because the requirements are referenced in OMB Memorandum M–05–22 and in other supplemental guidance on the CIO Council's Web site.

Another respondent stated that OMB Memorandum M–05–22 defines an aggressive target for initial agency adoption and operational deployment of a technology that is relatively new and unproven to most agencies. It is not clear that a second piece of policy is required to achieve the same goal as OMB Memorandum M–05–22. If the scope of the FAR is broader than OMB Memorandum M–05–22, then it would seem premature to pursue this broader policy until further IPv6 specifications and testing efforts mature and the results of the existing planning efforts to understand agency mission requirements, operational impacts and potential security ramifications are available.

Response: Proactive integration of IPv6 requirements into Federal contracts may reduce the costs and complexity of transition by ensuring that Federal

applications can operate in an IPv6 environment without costly upgrades. The final rule is necessary to amend the FAR to require IPv6 capable products be included in IT procurements. In addition, establishing FAR language ensures that all new information technology systems and applications purchased by the Federal Government will be able to operate in an IPv6 environment, to the maximum extent practical. The Councils believe that the final rule fully captures the intent of OMB Memorandum M–05–22.

b. Comment: One respondent questioned whether any of the proposed amendments to FAR parts 7, 12 and 39 need to refer to the ''additional requirement'' at all. It is likely the ''additional requirements'' are those the CIO Council is or may be developing to address internal, non-procurement related transition activities (see Attachment C to OMB memorandum). Instead of referring broadly to the OMB memorandum in the proposed FAR amendments, it might make sense to refer narrowly to the section of the memorandum entitled ''Selecting Products and Capabilities,'' the only portion of the memorandum that directly addresses acquisition of IPv6 compliant information technology. FAR parts 7 and 12 both refer to the OMB memorandum and to ''additional requirements'' and FAR part 39 refers only to the OMB memorandum and not ''additional requirements''.

Response: This final rule has been revised to remove references to ''additional requirements''. New FAR 11.002(g) refers to NIST Special Publication 500–267. Previous Web references have been deleted and a reference to OMB Memorandum M–05–22 has been retained.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Government expects that commercially available items will be required, with no additional testing being necessary. The Chief Counsel for Advocacy, Office of Advocacy, within the Small Business Administration (SBA) was consulted by the Councils on the impact of this rule on small businesses. SBA conducted its own informal survey with small businesses and their conclusion is that there is no negative impact on small businesses.There are no known significant alternatives that will accomplish the objectives of this rule. No alternatives were proposed during the public comment period.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 7, 11, 12, and 39

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 7, 11, 12, and 39 as set forth below:

■ 1. The authority citation for 48 CFR parts 7, 11, 12, and 39 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

■ 2. Amend section 7.105 by adding paragraph (b)(4)(iii) to read as follows:

7.105 Contents of written acquisition plans.

(b) * * *

(4) * * *

(iii) For information technology acquisitions using Internet Protocol, discuss whether the requirements documents include the Internet Protocol compliance requirements specified in 11.002(g) or a waiver of these requirements has been granted by the agency's Chief Information Officer.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 3. Amend section 11.002 by redesignating paragraph (g) as paragraph (h), and adding a new paragraph (g) to read as follows:

11.002 Policy.

* * * * *

(g) Unless the agency Chief Information Officer waives the requirement, when acquiring information technology using Internet Protocol, the requirements documents must include reference to the appropriate technical capabilities defined in the USGv6 Profile (NIST Special Publication 500–267) and the corresponding declarations of conformance defined in the USGv6 Test Program. The applicability of IPv6 to agency networks, infrastructure, and applications specific to individual acquisitions will be in accordance with the agency's Enterprise Architecture (see OMB Memorandum M–05–22 dated August 2, 2005).

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 12.202 by adding paragraph (e) to read as follows:

12.202 Market research and description of agency need.

* * * * *

(e) When acquiring information technology using Internet Protocol, agencies must include the appropriate Internet Protocol compliance requirements in accordance with 11.002(g).

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 5. Amend section 39.101 by adding paragraph (e) to read as follows:

39.101 Policy.

* * * * *

(e) When acquiring information technology using Internet Protocol, agencies must include the appropriate Internet Protocol compliance requirements in accordance with 11.002(g).

[FR Doc. E9–28931 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 26, 31, and 52

[FAC 2005–38; FAR Case 2008–017; Item IV; Docket 2009–0007, Sequence 1]

RIN 9000–AL49

Federal Acquisition Regulation; FAR Case 2008–017, Federal Food Donation Act of 2008 (Pub. L. 110–247)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted, as final, with no changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Federal Food Donation Act of 2008 (Pub. L. 110–247), which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

DATES: *Effective Date*: December 10, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael Jackson, Procurement Analyst, at (202) 208–4949. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2008–017.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Food Donation Act of 2008 (Pub. L. 110–247) encourages Federal agencies and their contractors to donate excess food to nonprofit organizations serving the needy. The Act requires Federal contracts above $25,000 for the provision, service, or sale of food in the United States, to include a clause that encourages, but does not require, the donation of excess food to nonprofit organizations. The Act would also extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

The final rule is applicable to contracts above $25,000 for the provision, service, or sale of food in the United States (*i.e.*, food supply or food service). The type of solicitations and contract actions anticipated to be applicable to this law will mostly be for fixed-price commercial services; however, there may be circumstances when a noncommercial and/or cost-reimbursement requirement may apply. For example, on an indefinite-delivery, indefinite-quantity cost-reimbursement contract for logistical support to be performed in the United States, there may be a task order needed to provide food service to feed personnel.

The interim rule was published in the **Federal Register** at 74 FR 11829 on March 19, 2009, with an effective date of March 19, 2009, and a request for comments by May 18, 2009. Three respondents submitted comments in response to the interim rule. Below are the comments received on the interim rule along with the responses.

Comment 1, FAR matrix. One commenter had several comments about errors in the FAR matrix.

Response: There were several inadvertent errors that were made on the FAR clause matrix. These errors have been corrected and are reflected in the FAR clause matrix issued with the final rule.

Comment 2, Applicability for non-appropriated funds. The commenter expresses uncertainty as to whether this rule is applicable to their typical (non-appropriated funds) cafeteria contracts. The clause at FAR 52.226–6 is to be included in solicitations and contracts greater than $25,000 for the provision, service, or sale of food in the United States. Is the $25,000 threshold intended to mean that amount of the appropriated funding, or can it also be satisfied by the sales volume? Will there be additional GSA financial management regulation guidance planned?

Response: The FAR only covers contracts made with appropriated funds. The rule is applicable to contracts greater than $25,000 for the provision, service, or sale of food in the United States. This means the dollar amount of the contract only, not sales volume. GSA has jurisdiction over changes to the Federal Management Regulation (FMR) and we anticipate a change in the FMR to address this requirement.

Comment 3, Implementation of the Federal Food Donation Act of 2008. The benefits of this rule's implementation are evident based on the widespread support the Act received. The assistance it will provide to food insecure persons is truly important. This is especially crucial during these difficult economic times. Food suppliers will receive the listed benefits, as well as be protected against litigation by the Bill Emerson Good Samaritan Food Donation Act. Based on these reasons, we urge you to encourage the passage of this rule and implement it as quickly as possible.

Response: The interim rule was effective on the publication date of March 19, 2009. This means the rule has been implemented and is effective as of that date. The final rule adopts the interim rule as final, without change.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule is not mandatory for contractors, including small businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 26, 31, and 52

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Parts 26, 31, and 52 which was published in the **Federal Register** at 74 FR 11829 on March 19, 2009, is adopted as a final rule without change.

[FR Doc. E9–28933 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–38; FAR Case 2006–021; Item V; Docket 2009-0043, Sequence 1]

RIN 9000–AK84

Federal Acquisition Regulation; FAR Case 2006–021, Postretirement Benefits (PRB), FAS 106

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to permit the contractor to measure accrued PRB costs using either the criteria in Internal Revenue Code (IRC) 419 or the criteria in Financial Accounting Standard (FAS) 106.

DATES: *Effective Date*: January 11, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2006–021.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 31.205–6(o) allows contractors to choose among three different accounting methods for PRB costs; pay-as-you-go (cash basis), terminal funding, and accrual basis.

When the accrual basis is used, the FAR currently requires that costs must be measured based on the requirements of Financial Accounting Standard (FAS) 106.

However, the tax-deductible amount that is contributed to the retiree benefit trust, which is part of a welfare benefit plan, is determined using Internal Revenue Code (IRC) (Title 26 of the United States Code) sections 419 and 419A, which has different measurement criteria than FAS 106. As a result, the FAS 106 amount can often exceed the costs measured under IRC sections 419 and 419A, and contractors that choose to accrue PRB costs for Government reimbursement face a dilemma: whether to fund the entire FAS 106 amount to obtain Government reimbursement of the costs, regardless of tax implications; or fund only the tax deductible amount and not be reimbursed for the entire FAS 106 amount under their Government contracts.

Consequently, DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 64185, November 15, 2007 to address this matter.

The Councils are amending FAR 31.205–6(o) to alleviate this dilemma. This amendment would provide the contractor an option of measuring accrued PRB costs using criteria based on IRC sections 419 and 419A rather than FAS 106, thereby permitting the contractor to fund the entire tax deductible amount without having a portion potentially disallowed because it did not meet the FAR's current measurement criteria. The Councils note that this amendment will not change the total measured PRB costs, *i.e.*, the total measured PRB costs over the life of the PRB plan would be the same whether the contractor chose to apply the criteria in FAS 106 or IRC sections 419 and 419A.

The Councils note that in this final rule the Government will not pay higher PRB costs, since the resulting difference from contractors previously funding the lower IRC amount rather than the full FAS amount will continue to be an unallowable cost. This final rule does permit contractors to electively switch to the IRC 419 accrual basis and avoid any current or future disallowances.

B. Public Comments

Public comments were received from two industry associations and one contractor.

The commenters made specific remarks but generally agreed with the purpose of the proposed rule.

One commenter wrote that they:

''generally agree with the concept of revising FAR 31.205–6(o) to better align FAR allowability provisions for Postretirement Benefit (PRB) Plans accounted for on an accrual basis with payments made to benefit trusts for tax purposes. We see this as a positive step toward allowing appropriate flexibility and equity in measuring, assigning and allocating allowable PRB costs.''

Another commented:

''We support the Councils' proposal to amend the Federal Acquisition Regulation 31.205–6(o) (''FAR'') to permit contractors to measure postretirement benefit (''PRB'') costs using either the criteria in Internal Revenue Code section 419 (''IRC'') or the criteria in the Statement of Financial Accounting Standards No. 106 (''FAS'').''

Specific Comments:

Comment 1: Two commenters objected to the 15 year minimum amortization period for PRB costs, stating:

''The proposed rule specifying that assignment of PRB costs be made over ''the working lives of employees or fifteen years, whichever is longer'' may not be appropriate. In our opinion, the proposed FAR requirement for costs measured in accordance with the deductibility measurement under the Internal Revenue Code (IRC) Section *419/419A* has the potential for mismatching PRB costs with the underlying causal activity, that is, the labor of active employees covered by PRB plans. The IRC requires that the costs be assigned over the working lives of the employees, whereas the proposed rule would require that the costs be assigned over the working lives of employees or fifteen years, whichever is longer. We are concerned about extending the assignment of costs beyond the working lives of employees, as this would cause costs to be charged to contracts that are not getting the benefit of those employees' services.''

Response: The Councils believe the language in the proposed rule is appropriate. Many PRB plans cover no or few active employees, as contractors have closed their PRB plans to new entrants. FAS 106 requires that if a plan is comprised predominantly of inactive participants, then the cost should be spread over the future life expectancy of the inactive employees. FAR 31.205–6(o)(2)(ii) requires that if terminal funding is used then the liability must be spread over 15 years. For contractors who elect to use the proposed alternative accrual accounting method, the Councils believe that the FAS 106 requirement that plans predominantly comprised of inactive participants be spread over future periods should be maintained. For consistency, the proposed rule uses the same amortized recognition as required for terminally funded plans. The proposed rule adopted a simple ''greater-of'' rule to avoid any disputes concerning when a plan is predominantly comprised of inactive employees.

However, if the plan population comprises only inactive participants, the cost shall be spread over the average future life expectancy of the participants. This ensures that the accruals do not extend beyond the period when benefits are paid and the trust is dissolved. Therefore, the final rule revises FAR 31.205–6(o)(2)(iii)(A)(*2*)(*ii*) to state: ''However, if the plan is comprised of inactive participants only, the cost shall be spread over the average future life expectancy of the participants.''

Comment 2: The proposed rule does not address several issues of assignment of credits to a period that can arise when the accrual is based on FAS 106.

Two commenters remarked as follows regarding contract credits that might arise:

''Measuring PRB costs in accordance with FAS 106 can result in credits being assigned to cost accounting periods. FAS 106 dictates these credits be immediately assigned to cost accounting periods. However, contractors have no ability to extract irrevocably funded PRB contributions from their trusts. * * *''

Commenters were also concerned that the proposed rule does not address conflicts between the FAR and FAS 106

when there is a curtailment, settlement or payment of ''special termination benefits.'' As a commenter noted:

''In the event of a curtailment, settlement or payment of ''special termination benefits'' (i.e., early retirement enhancements, FAS 106 mandates immediate recognition. This assignment of income was also one of the issues with FAS 106, which the failed promulgation of CAS 419 sought to moderate.''

On the other hand, another commenter correctly noted that the proposed rule permits a contractor to elect to account for its PRB costs following the welfare benefit fund provisions of the IRC as an alternative to the current rule that limits accrual accounting to the provisions of FAS 106. The commenter discusses the advantages of having a choice as follows:

''Under existing FAR rules, contractors under accrual basis of accounting must use FAS 106 (so long as the transition obligation cost is amortized) for measuring PRB costs and fund this FAR expense to the PRB plan in order for the FAS expense to be considered an allowable cost.

''We believe this amendment will promote simplification of the funding of PRB plans by avoiding the dilemma of whether to fund the IRC limit or the FAS expense when there is conflict with each other. The contractor would not need to be worried about running afoul of tax rules or under-billing the contract.

''In addition, one advantage of permitting the PRB cost to be either FAS or IRC basis is that in the first year of a PRB funded plan, the amendment gives the contractor the flexibility to fund the larger of the two bases in order to lower PRB costs in the future as assets grow with investment returns. Done consistently under the same accounting basis, this approach would benefit the contract with lower PRB costs in the long run rather than limiting funding due the current dilemma of funding FAS or IRC.

''And finally, the amendment will promote an equitable measure of allowable PRB costs during the life of the PRB plan. Whether choosing FAS or IRC basis for funding, both methods would arrive at the same aggregate allowable cost over the life of the PRB plan.''

Response: The Councils believe that the issues regarding credits, curtailments, and settlements do not need to be addressed in the proposed rule. No evidence has been presented that this issue has been a problem. Furthermore, these issues are outside the scope of this case. As noted in the background section of **Federal Register** notice:

''* * * This amendment would provide the contractor an option of measuring accrued PRB costs using criteria based on IRC 419 rather than FAS 106, thereby permitting the contractor to fund the entire tax deductible amount without having a portion disallowed because it did not meet the FAR's current measurement criteria. * * *''

The proposed rule provides an alternative for measuring PRB costs on an accrual accounting basis. The proposed rule and **Federal Register** notice do not address the existing provisions which, first published as 56 FR 29127 on June 25, 1991, adopted generally accepted accounting principles (FAS 106). The original rule was amended by 56 FR 41738 on August 22, 1991 to add a limitation only on the choice of recognizing the transition obligation.

Comment 3: Commenters expressed a concern with the provision allowing use of a healthcare inflation assumption as follows:

''The proposed rule's specific authorization of the use of a healthcare inflation assumption for measurement of costs which would otherwise be in accordance with IRC Sections 419/419A creates a mismatch of FAR allowable costs and IRS deductibility limitations. If the intent of the rule was to better align funding with FAR requirements, we find this provision, while not detrimental, is inconsistent with the stated purpose of the proposed rule, which is to better align the FAR allowability rules with the IRC for those contractors that choose to use IRC 419/419a.''

Response: The Councils believe that the proposed rule should be revised to clarify the intent of this language. Generally accepted accounting principles currently require the use of a healthcare inflation assumption. For consistency, the intent of the proposed rule was to require use of a health care assumption unless the IRC welfare benefit fund rules prohibited it. The Councils are revising the wording in the proposed rule to assure clarity on this issue. Thus, the final rule revises FAR 31.205–6(o)(2)(iii)(A)(*2*)(*i*) to state that the costs shall ''be measured using reasonable actuarial assumptions, which shall include a healthcare inflation assumption unless prohibited by the Internal Revenue Code provisions governing welfare benefit funds.''

Comment 4: Finally, two commenters opined that the requirement that assets be restricted is unnecessary. One of the commenters wrote: ''Our recommended changes to the proposed rule are shown in Attachment I. It should be noted that we have also proposed the elimination of the last sentence in 31.205–6(o)(2)(iii)(B). We do not believe that this asset restriction language is necessary to protect the Government's interests.''

Response: The Councils disagree with the commenter. The Councils believe that the Government must assure there is adequate protection of the assets. If the fund holding the PRB plan can be cancelled or diverted to other purposes, then deposits to the fund can not be recognized as incurred. Moreover, this language is consistent with the FAS 106 definition of ''plan assets,'' and with the IRC 419/419A criteria for tax-exempt funding.

The Councils note that even if an appropriately restricted fund is used, once all obligations for benefits have been settled the remaining assets may revert to the contractor or else inure to the contractor's benefit if diverted to provide other employee benefits. However, the Councils believe that the Government's interests are protected by existing FAR 31.205–6(o)(5) which states:

The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data were required or which were subject to Subpart 31.2.

Comment 5: One commenter expressed its concern with how the transition between accounting methods would be accomplished, writing:

''However, we are not certain if this proposal addresses changes of accounting methods, particularly from FAS to IRC basis; whether such resulting costs will be fully allowed immediately or transitioned over a period of time. Under the concept that both methods should yield the same aggregate cost over time, an immediate change of accounting method may misalign this relationship, and thus, new transition rules may be designed to preserve the equality. If this occurs, we believe it would be advisable for the Councils to promulgate new transition rules—preferably short-term ones in order to avoid prolonged complexity in cost calculations for many years, and incorporate them in FAR Part 31.205–6(o).''

This commenter further explained:

''FAS 106 allows either the immediate expensing or the amortization of the transition obligation. However, for Government contract costing purposes,

the transition obligation must be capitalized and subsequently amortized. The parenthetical clause ''so long as the transition obligation cost is amortized'' could be more clearly stated as ''provided the transition obligation cost is amortized rather than expensed.''''

The commenter also noted that actuaries and mathematicians have stated that both accrual accounting methods would result in the same aggregate costs over the life of the PRB plan when either method is applied to a separate PRB plan as of ''day one.'' But they then expressed their concern that changing the accounting method ''midstream'' might cause misalignment of costs due to differences of timing arising from the two computational methodologies.

Finally they expanded their written comment by observing that the rule will permit a change of accrual accounting method and that this transition will result in a higher or lower amount of PRB costs in subsequent years than would have resulted without a change in methods. The commenter explained they were asking if there will be a ''phase-in period'' when changing methods of accounting for PRB costs, *i.e.*, would the change of costs be recognized in a single accounting period or amortized over future periods.

Response: The Councils agree that the language in the proposed rule should be revised to address the transition issue.

The Councils believe that the existing FAR 31.205–6(o)(2)(iii) provision regarding recognition of the FAS 106 Transition Obligation clearly articulates that the transition obligation cost is amortized rather than expensed.

The comment does raise two issues. First, a paraphrase of the existing policy at FAR 31.205–6(o)(2)(iii)(A) follows:

Accrued PRB costs shall be measured and assigned in accordance with generally accepted accounting principles, provided the portion of PRB costs attributable to the transition obligation assigned to the current year that is in excess of the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Financial Accounting Standards Board Statement 106 is unallowable. The transition obligation is defined in Statement 106, paragraph 110;

The cost impact of the change in cost accounting practice is addressed by the Cost Accounting Standards, rather than the FAR, for those contracts covered by the CAS. Under the CAS this would be a unilateral change in cost accounting practice; as such, the Government would not pay any increased costs resulting from this change unless the contracting officer has determined it to be a desirable change. For those contracts not covered by the CAS, the FAR does not provide for price adjustments resulting from a change in cost accounting practice. The Councils do not believe this change is so unique as to require an alteration to this long-standing set of regulations regarding the treatment of changes in cost accounting practice. Thus, the language in the proposed rule has not been revised to address this issue.

The second issue regards the treatment of the change in actuarial liability and normal cost and recognition of accruals assigned to prior periods. Language has been added at FAR 31.205–6(o)(2)(iii)(G) to require that the Government has an opportunity to review and approve how the change in accounting method will be implemented. The new provision at FAR 31.205–6(o)(2)(iii)(G) reads:

(G) Comply with the following when changing from one accrual accounting method to another: the contractor shall—

(*1*) Treat the change in the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) as a gain or loss; and

(*2*) Present an analysis demonstrating that all costs assigned to prior periods have been accounted for in accordance with subparagraphs (D), (E), and (F) to ensure that no duplicate recovery of costs exists. Any duplicate recovery of costs due to the change from one method to another is unallowable. The analysis and new accrual accounting method may be a subject appropriate for an advance agreement in accordance with 31.109.

It is clear that the final rule must address how the transition from one cost method to another is accomplished. As one commenter observed, at ''day one'' the cost of the PRB plan, on a present value basis, will be the same under any of the methods permitted by FAR 31.205–6(o). However, after day one, this equivalence can only be maintained if there is a full accounting for costs assigned to prior periods, adjusted for interest, benefit payments, and administrative expenses. Only if prior funding and unfunded accrued costs are fully recognized will the costs assigned to future periods produce equivalent results, on a present value basis, over the life of the PRB plan. And to avoid any misunderstandings, the final rule at FAR 31.205–6(o)(2)(iii)(D) makes it clear that any prior period unfunded accrual becomes and remains unallowable under either accrual accounting method. FAR 31.205–6(o)(2)(iii)(D) reads:

(D) Eliminate from costs of current and future periods the accumulated value of any prior period costs that were unallowable in accordance with paragraph (3), adjusted for interest under paragraph(4).

The assets do fully account for prior accrued costs that were funded and the accumulated value of unallowable costs fully account for any prior unfunded accruals. To the extent that prior contract costs were always based on accrual accounting, prior accruals can be recognized in the current value of the plan assets plus the accumulated value of prior unallowable costs, adjusted for interest cost due to delayed funding.

And, finally, some contractors may have made deposits to voluntary employee benefit associations or other trusts in prior periods but used pay-as-you-go or terminal funding for contract costing purposes during those prior periods. To the extent that assets are attributable to costs that have never been recognized as Government contract cost, such assets must be excluded from the assets that have been accumulated by prior assigned costs. Otherwise, the contractor would be inequitably prevented from claiming a cost that has not yet been reimbursed.

Therefore, to ensure that prior funded accrued costs are fully recognized, paragraph FAR 31.205–6(o)(2)(iii)(E) has been added to the final rule. This provision reads:

(E) Calculate the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) using the market (fair) value of assets that have been accumulated by funding costs assigned to prior periods for contract accounting purposes.

Likewise, FAR 31.205–6(o)(2)(iii)(F) specifies that assets accumulated by deposits that were not used to claim contract costs are identified as prepayment credits and excluded from the plan assets used to determine the unfunded actuarial liability. FAR 31.205–6(o)(2)(iii)(F) reads:

(F) Recognize as a prepayment credit the market (fair) value of assets that were accumulated by deposits or contributions that were not used to fund costs assigned to previous periods for contract accounting purposes.

C. Regulatory Planning and Review

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1933. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most small entities do not accrue PRB costs for Government contract costing purposes.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.001 by adding, in alphabetical order, the definition ''welfare benefit fund'' to read as follows:

31.001 Definitions.

* * * * *

Welfare benefit fund means a trust or organization which receives and accumulates assets to be used either for the payment of postretirement benefits, or for the purchase of such benefits, provided such accumulated assets form a part of a postretirement benefit plan.

■ 3. Amend section 31.205–6 by revising paragraph (o)(2)(iii) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(o) * * *

(2) * * *

(iii) *Accrual basis.* PRB costs are accrued during the working lives of employees. Accrued PRB costs shall comply with the following:

(A) Be measured and assigned in accordance with one of the following two methods:

(*1*) Generally accepted accounting principles, provided the portion of PRB costs attributable to the transition obligation assigned to the current year that is in excess of the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Financial Accounting Standards Board Statement 106 is unallowable. The transition obligation is defined in Statement 106, paragraph 110; or

(*2*) Contributions to a welfare benefit fund determined in accordance with applicable Internal Revenue Code. Allowable PRB costs based on such contributions shall—

(*i*) Be measured using reasonable actuarial assumptions, which shall include a healthcare inflation assumption unless prohibited by the Internal Revenue Code provisions governing welfare benefit funds;

(*ii*) Be assigned to accounting periods on the basis of the average working lives of active employees covered by the PRB plan or a 15 year period, whichever period is longer. However, if the plan is comprised of inactive participants only, the cost shall be spread over the average future life expectancy of the participants; and

(*iii*) Exclude Federal income taxes, whether incurred by the fund or the contractor (including any increase in PRB costs associated with such taxes), unless the fund holding the plan assets is tax-exempt under the provisions of 26 USC § 501(c).

(B) Be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The assets shall be segregated in the trust, or otherwise effectively restricted, so that they cannot be used by the employer for other purposes.

(C) Be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(D) Eliminate from costs of current and future periods the accumulated value of any prior period costs that were unallowable in accordance with paragraph (o)(3) of this section, adjusted for interest under paragraph (o)(4) of this section.

(E) Calculate the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) using the market (fair) value of assets that have been accumulated by funding costs assigned to prior periods for contract accounting purposes.

(F) Recognize as a prepayment credit the market (fair) value of assets that were accumulated by deposits or contributions that were not used to fund costs assigned to previous periods for contract accounting purposes.

(G) Comply with the following when changing from one accrual accounting method to another: the contractor shall—

(*1*) Treat the change in the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) as a gain or loss; and

(*2*) Present an analysis demonstrating that all costs assigned to prior periods have been accounted for in accordance with paragraphs (o)(2)(iii)(D), (E), and (F) of this section to ensure that no duplicate recovery of costs exists. Any duplicate recovery of costs due to the change from one method to another is unallowable. The analysis and new accrual accounting method may be a subject appropriate for an advance agreement in accordance with 31.109.

* * * * *

[FR Doc. E9–28934 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–38; FAR Case 2006–024; Item VI; Docket 2009–0044, Sequence 1]

RIN 9000–AK86

Federal Acquisition Regulation; FAR Case 2006–024, Travel Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to change the travel cost principle to ensure a consistent application of the limitation on allowable contractor airfare costs.

DATES: *Effective Date*: January 11, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2006–024.

SUPPLEMENTARY INFORMATION:

A. Background

The travel cost principle at FAR 31.205–46(b) currently limits allowable contractor airfare costs to ''the lowest customary standard, coach, or equivalent airfare offered during normal business hours.'' The Councils are aware that this limitation is being interpreted inconsistently, either as *lowest coach fare available to the contractor or lowest coach fare available to the general public*, and these inconsistent interpretations can lead to confusion regarding what costs are allowable.

The Councils believe that the reasonable standard to apply in determining the allowability of airfares is the *lowest priced airfare available to the contractor*. It is not prudent to allow the costs of the lowest priced airfares available to the general public when contractors have obtained lower priced airfares as a result of direct negotiation.

Furthermore, the Councils believe that the cost principle should be clarified to omit the term ''standard'' from the description of the classes of allowable airfares since that term does not describe actual classes of airline service. The Councils further believe that the terms ''coach, or equivalent,'' given the great variety of airfares often available, may result in cases where a ''coach, or equivalent'' fare is not the lowest airfare available to contractors, and should thus be omitted.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 72325, December 20, 2007.

B. Public Comments

The comment period closed on February 19, 2008. Ten comments were received from nine respondents. All comments were reviewed and analyzed.

General Comments.

Since most of the comments submitted were unique and brief, it was decided to address all ten specific comments.

Specific Comments:

1. *Comment*: Does ''lowest priced coach class'' mean the cost of ''non-refundable'' tickets when they are available and their cost is lower than refundable tickets?

Response: If the lowest available airfare is a non-refundable ticket then it is the allowable cost unless one of the exceptions in FAR 31.205–46(b) applies.

2. *Comment*: The requirement for supporting documentation and justification for airfare costs in excess of the ''lowest coach airfare available'' should include documentation justifying purchase of a higher-cost refundable ticket in those instances when a non-refundable ticket is available.

Response: Concur in principle.

3. *Comment*: The proposed change ''clarifies FAR 31.205–46 to the benefit of all contractors'' and is consistent with requiring that all income, rebates, allowances or other credit relating to any allowable cost shall be credited to the Government.

Response: Concur in principle. This change is consistent with FAR 31.201–5, Credits.

4. *Comment*: How will the Government determine the lowest priced coach class airfare available to the contractor versus the lowest priced coach class airfare available to the general public if the contractor does not have a negotiated airfare agreement with air travel providers and, therefore, only has available to it the same airfare that is available to the general public?

Response: In the situations described by this commenter, the lowest priced coach class airfare available to the contractor and the lowest priced coach class airfare available to the general public are the same. In this regard, the revision promulgated in this FAR case has no effect on the contractor. This amendment is intended to prohibit the contractor's practice where it has negotiated airfare agreements with travel providers and uses those agreements to purchase first class or business class seats but does not use the lowest priced airfare available under the agreements to determine the allowable cost baseline for the first class or business class seats, but instead determines the allowable cost based on the lowest airfare available to the general public instead of the lowest airfare available to the contractor under the agreements. This amendment will require the contractor to use the lowest airfare available to the contractor.

5. *Comment*: Please address whether or not costs associated with cancelling or changing restricted tickets will be allowable; alternatively, insert the word ''unrestricted'' into the phrase, *i.e.*, ''lowest priced coach class unrestricted or equivalent airfare available to the contractor.''

Response: The Councils believe that the revision does not impact the allowability of costs associated with cancelling or changing restricted tickets or a forfeiture of air travel tickets purchased in good faith but later determined to be unsuitable to the mission requirements. To answer the Commenter's questions, the costs before and after the revised cost principle should be allowable.

6. *Comment*: The ''standard'' rate for contractors with negotiated airfare agreements should be those same, negotiated airfares, rather than airfares available to the general public. ''This is an issue of common sense.''

Response: This cost principle amendment explicitly identifies the lowest airfares available to the contractor, including its negotiated airfare agreements and those available to the general public, should be the baseline in determining allowable airfare. This amendment should eliminate inconsistent allowable airfare baselines used by various contractors; that is, some contractors do not consider the lowest priced airfare available to them under their negotiated agreements in determining the allowable airfare cost.

7. *Comment*: Does the phrase ''lowest priced coach class, or equivalent, airfare'' imply that the airfare tickets are refundable, as non-refundable tickets are typically lower than refundable tickets?

Response: Same response as response to comment number 1.

8. *Comment*: Airfare pricing is dynamic. Airlines provide for a variety of fares on given flights based upon available seat inventory. Therefore, employees of the same contractor, traveling on the same flight, may have different fares. Documenting and supporting Government inquiries as to why there is variation in the ''lowest fare'' among individuals on the same flight would be unduly burdensome. Under the existing regulation, travel agents provide a standard airfare that is readily available and clearly understood; the proposed amendment will increase costs by requiring additional administration to document the allowable airfare to satisfy Government audit inquiries.

Response: The cost principle currently requires the justification and documentation of airfare costs in excess of the lowest customary, standard coach, or equivalent airfare. In view of the changes in the airline industry, the terms ''customary, standard, coach or equivalent'' increasingly do not describe an actual class of airline service. This amendment clarifies that the reasonable standard to apply in determining allowability of airfare cost is the lowest airfare available to the contractor. This clarification in the cost principle should not increase the documentation implicit in the existing cost principle.

9. *Comment*: The proposed amendment is based upon the premise that there is a standard airfare rate that contractors pay each time for a negotiated fare. There are significant

differences in airfare based upon timing and load factors. Employees of the same contractor on the same flight might incur different airfare prices based on supply and demand. Determination of allowable airfare based upon this proposed rule of the ''available air fare standard'' will be more difficult to determine than exists under the current cost principle. We see no need for the proposed revision as it appears to be based upon the premise that there is only one negotiated price a contractor will pay for a flight.

Response: This amendment does not establish any ''available air fare standard'' nor does the amendment presume that there is only one negotiated price a contractor can pay for a particular flight. The final rule eliminates the reference to ''coach or equivalent''.

10. *Comment*: There are two parts to this comment. (1) The proposed amendment is perceived to require a comparison of coach class fares available to determine the lowest available for allowability purposes; as such, the comparison would be impossible to apply systematically for a number of reasons, most notably the disparity in the nature of price reductions. A specific flight with a negotiated airfare may appear to be the lowest cost when purchasing the ticket, but in fact a flight with a different airline providing a volume rebate later has a lower net cost. Throughout the cost principles is the underlying concept that only reasonable costs will be reimbursed. The measure of what is reasonable has never been interpreted to represent only the absolutely lowest cost available. (2) Also, elimination of the word ''standard'' from paragraph (b) of the cost principle creates a conflict with paragraph (c)(2) of the cost principle which requires comparison to ''standard airfare'' for travel costs by contractor-owed, -leased, or chartered aircraft.

Response: With respect to the first comment, the Councils do not believe the revision will be impossible to apply systematically. The amendment is not intended to guide contractors through the decision-making process of selecting the most economical airfare with the lowest net cost when multiple corporate airfare agreements are in place, as this is properly addressed in the contractor's policies and procedures that should be applied appropriately and reasonably in the circumstances of each travel mission and its associated scheduling requirements. In relying on the contractor's procedures to select the most economical airfare appropriate in the circumstances, this amendment only seeks to clarify for the contractor that it should use the lowest airfare available to the contractor that meets the schedule requirements of the trip rather than considering only airfare available to the general public for the same flight. This amendment makes explicit that the lowest of the two should be selected as the appropriate baseline.

With respect to the second comment, the noted ''conflict'' created among paragraphs (b) and (c)(2) by the elimination of the word ''standard'' from (b), the Councils appreciate the commenter's observation and have replaced the word ''standard'' with ''allowable'' in paragraph (c)(2) where applicable.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1933. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The Councils believe that few small businesses have negotiated rate agreements with airlines. The rule will primarily affect businesses with negotiated rate agreements who otherwise might seek to charge negotiated rates for first class or business travel which are lower than the coach rate available to the general public. Finally, no comments were received from small businesses on the Regulatory Flexibility Act statement in the proposed rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.205–46 by revising paragraph (b); and by removing from paragraph (c)(2) introductory text the word ''standard'' and replacing it with the word ''allowable'' wherever it appears (twice). The revised text reads as follows:

31.205–46 Travel costs.

* * * * *

(b) Airfare costs in excess of the lowest priced airfare available to the contractor during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

* * * * *

[FR Doc. E9–28935 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 8, 15, and 52

[FAC 2005–38; Item VII; Docket 2009–0003; Sequence 6]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

DATES: *Effective Date*: December 10, 2009.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1800 F Street,

NW., Room 4041, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–38, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

List of Subjects in 48 CFR Parts 6, 8, 15, and 52

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 6, 8, 15, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 6, 8, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

■ 2. Amend section 6.302–2 by revising paragraph (d) to read as follows:

6.302–2 Unusual and compelling urgency.

* * * * *

(d) *Period of Performance.* (1) The total period of performance of a contract awarded using this authority—

(i) May not exceed the time necessary—

(A) To meet the unusual and compelling requirements of the work to be performed under the contract; and

(B) For the agency to enter into another contract for the required goods and services through the use of competitive procedures; and

(ii) May not exceed one year unless the head of the agency entering into the contract determines that exceptional circumstances apply.

(2) The requirements in paragraph (d)(1) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.

(3) The determination of exceptional circumstances is in addition to the approval of the justification in 6.304.

(4) The determination may be made after contract award when making the determination prior to award would unreasonably delay the acquisition.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVCES

8.703 [Amended]

■ 3. Amend section 8.703 by removing ''*http://www.abilityone.gov/jwod/PL.html*'' and adding ''*http://www.abilityone.gov/index.html*'' in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.305 [Amended]

■ 4. Amend section 15.305 by removing from paragraph (a)(5) ''15.304(c)(3)(iii)'' and adding ''15.304(c)(3)(ii)'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.209–6 [Amended]

■ 5. Amend section 52.209–6 by removing from the introductory paragraph ''9.409(b)'' and adding ''9.409'' in its place.

52.212–5 [Amended]

■ 6. Amend section 52.212–5, in Alternate I, by removing ''12.301(b)(4)'' and adding ''12.301(b)(4)(i)'' in its place.

[FR Doc. E9–28937 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009–0002, Sequence 9]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–38; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–38 which amend the FAR. Interested parties may obtain further information regarding these rules by referring to FAC 2005–38 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Hada Flowers, FAR Secretariat, (202) 208–7282. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–38

Item	Subject	FAR case	Analyst
I	Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees.	2009–017	Cundiff.
II	Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts	2006–026	Jackson.
III	Internet Protocol Version 6 (IPv6)	2005–041	Woodson.
IV	Federal Food Donation Act of 2008 (Pub. L. 110–247)	2008–017	Jackson.
V	Postretirement Benefits (PRB), FAS 106	2006–021	Chambers.
VI	Travel Costs	2006–024	Chambers.
VII	Technical Amendments		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–38 amends the FAR as specified below:

Item I—Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2009–017)

This final rule amends the FAR to delete FAR subpart 22.16 and the corresponding FAR clause at 52.222–39,

Notification of Employee Rights Concerning Payment of Union Dues or Fees, which implemented Executive Order 13201, of February 17, 2001, of the same title. Executive Order 13201 required contractors to post a notice informing employees of their rights concerning payment of union dues or fees and detailed that employees could not be required to join unions or maintain membership in unions to retain their jobs. Executive Order 13496, of January 30, 2009, Notification of Employee Rights under Federal Labor Laws, revoked Executive Order 13201.

Item II—Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts (FAR Case 2006–026)

This final rule amends the FAR at parts 4, 8, 13, 16, 32, and 52 by restricting the use of the Governmentwide commercial purchase card as a method of payment for offerors with debt subject to the Treasury Offset Program (TOP). This final rule facilitates the collection of delinquent debts owed to the Government by requiring contracting officers to determine whether the Central Contractor Registration (CCR) database indicates that the contractor has delinquent debt that is subject to collection under the TOP. If a debt flag indicator is found in the CCR database, then the Governmentwide commercial purchase card shall not be authorized as a method of payment. The contracting officer is required to check for the debt flag indicator at the time of contract award or order issuance or placement. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) deleted the requirement to check CCR for the indicator before exercising an option. Purchases and orders at or below the micro-purchase threshold are exempt from verification in the CCR database as to whether the contractor has a debt flag indicator subject to collection under the TOP.

Item III—Internet Protocol Version 6 (IPv6) (FAR Case 2005–041)

This final rule adopts the proposed rule published in the **Federal Register** at 71 FR 50011, August 24, 2006, as a final rule with minor changes. This final rule amends FAR parts 7, 11, 12, and 39 to require Internet Protocol Version 6 (IPv6) compliant products be included in all new information technology (IT) procurements requiring Internet Protocol (IP).

IP is one of the primary mechanisms that define how and where information moves across networks. The widely-used IP industry standard is IP Version 4 (IPv4). The Office of Management and Budget (OMB) Memorandum M–05–22, dated August 2, 2005, requires all new IT procurements, to the maximum extent practicable, to include IPv6 compliant products and standards. In addition, OMB Memorandum M–05–22 provides guidance to agencies for transitioning to IPv6.

Item IV—Federal Food Donation Act of 2008 (Pub. L. 110–247) (FAR Case 2008–017)

This rule adopts as final, with no changes, the interim rule published in the **Federal Register** at 74 FR 11829 on March 19, 2009. This rule implements the Federal Food Donation Act of 2008 (Pub. L. 110–247), which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

The contracting officer is required to insert the clause at FAR 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations, in solicitations and contracts greater than $25,000 for the provision, service, or sale of food in the United States. Contractors would only be impacted if they decided to donate the excess food; they would bear all the costs of donating the excess food. The Act would extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

Item V—Postretirement Benefits (PRB), FAS 106 (FAR Case 2006–021)

Currently FAR 31.205–6(o) allows contractors to choose among three different accounting methods for PRB costs; pay-as-you-go (cash basis), terminal funding, and accrual basis using generally accepted accounting principles by applying Statement 106 of Financial Accounting Standards (FAS 106). The FAR also requires that any accrued PRB costs be paid to an insurer or trustee. This final rule amends the FAR to permit the use of Internal Revenue Code sections 419 and 419A contribution rules as an alternative method of determining the amount of accrued PRB costs on Government cost-based contracts.

Item VI—Travel Costs (FAR Case 2006–024)

This final rule amends the FAR to change the travel cost principle (FAR 31.205–46) to ensure a consistent application of the limitation on allowable contractor airfare costs. This rule applies the standard of the lowest fare available to the contractor. This rule takes notice that contractors frequently obtain fares that are lower than those available to the general public as a result of direct negotiation. The cost principle is clarified by removing the terms ''coach or equivalent'' and ''standard'' from the description of the classes of allowable airfares, since these terms increasingly do not describe actual classes of airline service. Thus, even when a ''coach'' fare may be available, given the great variety of fares often available, the ''coach'' fare may not be the lowest fare available, in particular when a contractor has a negotiated agreement with a carrier.

Item VII—Technical Amendments

Editorial changes are made at FAR 6.302–2, 8.703, 15.305, 52.209–6, and 52.212–5.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–28939 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–EP–S

Federal Register

Thursday,
December 10, 2009

Part III

Department of Education

34 CFR Subtitle B, Chapter II
School Improvement Grants; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

[Docket ID ED–2009–OESE–0010]

RIN 1810–AB06

School Improvement Grants; American Recovery and Reinvestment Act of 2009 (ARRA); Title I of the Elementary and Secondary Education Act of 1965, as Amended (ESEA)

ACTION: Final requirements for School Improvement Grants authorized under section 1003(g) of Title I of the ESEA.

SUMMARY: The U.S. Secretary of Education (Secretary) issues final requirements for School Improvement Grants authorized under section 1003(g) of Title I of the ESEA, and funded through both the Department of Education Appropriations Act, 2009 and the ARRA. The final requirements govern the process that a State educational agency (SEA) uses to award school improvement funds to local educational agencies (LEAs) with the persistently lowest-achieving Title I schools that demonstrate the greatest need for the funds and the strongest commitment to use those funds to raise substantially the achievement of the students attending those schools. Under the final requirements, an LEA may also use school improvement funds to serve persistently lowest-achieving secondary schools that are eligible for, but do not receive, Title I funds and Title I schools in improvement, corrective action, and restructuring that are not among the persistently lowest-achieving schools. The final requirements require an SEA to award school improvement funds to eligible LEAs in amounts sufficient to enable the persistently lowest-achieving schools to implement one of four specific school intervention models.

DATES: The requirements are effective February 8, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Zollie Stevenson, Jr., U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., room 3W320, Washington, DC 20202. Telephone: (202) 260–0826 or by e-mail: *Zollie.Stevenson@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: School Improvement Grants under section 1003(g) of the ESEA are used in Title I schools identified for improvement, corrective action, or restructuring that demonstrate the greatest need for the funds and the strongest commitment to use the funds to provide adequate resources in order to raise substantially the achievement of their students so as to enable those schools to make adequate yearly progress (AYP) and exit improvement status. These final requirements emphasize the use of School Improvement Grants in each State's persistently lowest-achieving Title I schools as well as, through a waiver, a State's persistently lowest-achieving secondary schools that are eligible for, but do not receive, Title I, Part A funds.

Availability of Funds: Appropriations for School Improvement Grants have grown from $125 million in fiscal year (FY) 2007 to $546 million in FY 2009. The ARRA provides an additional $3 billion for School Improvement Grants in FY 2009. These final requirements govern the total $3.546 billion in FY 2009 school improvement funds, an unprecedented sum with the potential to transform fundamentally some of the Nation's persistently lowest-achieving schools. The Secretary may also use these requirements in subsequent years in which this program is in effect.

Program Authority: 20 U.S.C. 6303(g).

Background:

Statutory Context:

Section 1003(g) of the ESEA requires the Secretary to award School Improvement Grants to each SEA based on the SEA's proportionate share of the funds it receives under Title I, Parts A, C, and D of the ESEA. In turn, each SEA must provide subgrants to LEAs that apply for those funds to assist their Title I schools identified for improvement, corrective action, or restructuring under section 1116 of the ESEA. This assistance is intended to help these schools implement reform strategies that result in substantially improved student achievement so that the schools can make AYP and exit improvement status.

To receive school improvement funds under section 1003(g), an SEA must submit an application to the Department at such time, and containing such information, as the Secretary shall reasonably require. An SEA must allocate at least 95 percent of its school improvement funds directly to LEAs, although the SEA may, with the approval of the LEAs that would receive the funds, directly provide assistance in implementing school reform strategies or arrange for their provision through such other entities as school support teams or educational service agencies. A subgrant to an LEA must be of sufficient size and scope to support the activities required under section 1116 of the ESEA. An LEA's *total* subgrant may not be less than $50,000 or more than $500,000 per year for each participating Title I school in improvement, corrective action, or restructuring. An LEA's subgrant is renewable for two additional one-year periods.

In awarding School Improvement Grants, an SEA must give priority to LEAs that, in their application to the SEA, demonstrate (1) the greatest need for the funds and (2) the strongest commitment to ensuring that the funds are used to provide adequate resources to enable the lowest-achieving schools to raise substantially the achievement of their students.

Overview of Final Requirements:

The Secretary published a notice of proposed requirements (NPR) for this program in the **Federal Register** on August 26, 2009 (74 FR 43101). That notice contained background information and the Secretary's rationale for focusing the historic FY 2009 investment in School Improvement Grants on turning around our Nation's persistently lowest-achieving schools. The final requirements retain the general provisions proposed in the NPR with some changes described later in this notice. We note where provisions in the NPR have been reorganized and renumbered in these final requirements.

To drive school improvement funds to LEAs with the greatest need for those funds, the Secretary is requiring each SEA to identify three tiers of schools:

- *Tier I schools:* Title I schools in improvement, corrective action, or restructuring that are identified by the SEA under paragraph (a)(1) of the definition of *persistently lowest-achieving schools.*
- *Tier II schools:* Secondary schools that are eligible for, but do not receive, Title I, Part A funds and are identified by the SEA under paragraph (a)(2) of the definition of *persistently lowest-achieving schools.*
- *Tier III schools:* Title I schools in improvement, corrective action, or restructuring that are not Tier I schools.

An LEA that wishes to receive a School Improvement Grant must submit an application to its SEA identifying which Tier I, Tier II, and Tier III schools it commits to serve and how it will use school improvement funds in its Tier I and Tier II schools to implement one of the following four school intervention models intended to improve the management and effectiveness of these schools:

- *Turnaround model,* which includes, among other actions, replacing the principal and rehiring no more than 50 percent of the school's staff, adopting

a new governance structure, and implementing an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with a State's academic standards.

• *Restart model,* in which an LEA converts the school or closes and reopens it under the management of a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process.

• *School closure,* in which an LEA closes the school and enrolls the students who attended the school in other, higher-achieving schools in the LEA.

• *Transformation model,* which addresses four specific areas critical to transforming persistently lowest-achieving schools.

We have fully aligned the school intervention models and related definitions across the Race to the Top, the State Fiscal Stabilization Fund Phase II, and the School Improvement Grants programs to make it easier for States to develop and implement consistent and coherent plans for turning around their persistently lowest-achieving schools.

In awarding School Improvement Grants to an eligible LEA, an SEA must provide sufficient funding to the LEA, consistent with its proposed budget, to implement the selected school intervention model in each Tier I and Tier II school the LEA commits to serve, to close schools, and to serve participating Tier III schools. An LEA's total grant award must contain funds for each Title I school in improvement, corrective action, or restructuring that the LEA commits to serve, including $500,000 per year for each Tier I school that will implement a turnaround, restart, or transformation model unless the LEA demonstrates that less funding is needed to fully and effectively implement its selected intervention.[1] Once an LEA receives its School Improvement Grant, it has the flexibility to spend more than $500,000 per year in its Tier I and Tier II schools so long as all schools identified in its application are served. Recognizing that it takes time to implement rigorous interventions and reap results in the persistently lowest-achieving schools, the final requirements enable an SEA or LEA to apply to the Secretary for a waiver of the period of availability of school improvement funds beyond September 30, 2011 so as to make those funds available to LEAs for up to three years.

Because data are critical to informing and evaluating the effectiveness of the rigorous interventions being implemented, SEAs and LEAs must report specific school-level data related to the use of school improvement funds and the impact of the specific interventions implemented.

Availability of State Administrative Funds:

The Secretary has taken two actions to assist SEAs in preparing to implement the final requirements at both the State and local levels. First, the Secretary published in the **Federal Register** a notice of final adjustments that permits each SEA to reserve an additional percentage of Title I, Part A funds (0.3 or 0.5 percent of its Title I, Part A ARRA allocation, depending on whether the SEA requests waivers of certain requirements) to help defray the costs associated with ARRA data collection and reporting requirements (74 FR 55215 (Oct. 27, 2009)), including those required by ARRA School Improvement Grants. Second, the Secretary is awarding immediately the full amount each State may reserve from its FY 2009 School Improvement Grant for State administration, technical assistance, and evaluation. These funds may be used at the State level for such activities as preparing the State application and developing LEA applications as well as providing technical assistance to LEAs with persistently lowest-achieving schools that will be likely to receive a School Improvement Grant. Such technical assistance might include disseminating model processes to assist LEAs in carrying out needs assessments and screening partner organizations; initiating State or regional efforts to recruit and develop principals to serve in persistently lowest-achieving schools; attracting EMOs and CMOs to the State to restart persistently lowest-achieving schools; and developing sample competencies that LEAs can use to review staff to work in a turnaround environment. An SEA may also allocate some of the funds to LEAs in order to provide resources to ensure that those LEAs are ready to implement the interventions in their Tier I and Tier II schools if and when they receive a School Improvement Grant. An LEA might, for example, use the funds to review student achievement; evaluate current policies and practices that support or impede reform; assess the strengths and weaknesses of school leaders, teachers, and staff; recruit and train effective principals capable of implementing an intervention; or identify and screen outside partners.

Major Changes from the School Improvement Grants NPR:

The following is a summary of the major, substantive changes we made based on public comments on the School Improvement Grants NPR as well as the NPR for the State Fiscal Stabilization Fund Phase II program and the notice of proposed priorities, requirements, definitions, and selection criteria for the Race to the Top program. The rationale for each of these changes is discussed in the *Analysis of Comments and Changes* section of this notice.

Major Changes Made in the State Fiscal Stabilization Fund Phase II Notice of Final Requirements, Definitions, and Approval Criteria

Because a central purpose of ARRA funds is to increase the academic achievement of students in struggling schools, the notices regarding the State Fiscal Stabilization Fund Phase II, the Race to the Top Fund, and the School Improvement Grants programs each included requirements related to struggling schools. Commenters on each notice recommended that the Department apply consistent definitions and requirements for struggling schools across all three programs. In response, we revised the four school intervention models proposed in the School Improvement Grants NPR and integrated them into the criteria, definitions, and requirements for all three programs. In addition, we developed several definitions for use in all three programs.

Because the State Fiscal Stabilization Fund Phase II notice of final requirements was the first to be published (74 FR 58436 (Nov. 12, 2009)), we issued, in that notice, the final requirements for the four school intervention models as well as definitions of *persistently lowest-achieving schools, increased learning time,* and *student growth.* The following summarizes the changes reflected in those final requirements from the School Improvement Grants NPR. (The section citations from the State Fiscal Stabilization Fund Phase II notice for the school intervention models are preceded by ''I.A.2'' and the definitions are in new section I.A.3 to conform to the remaining citations in the final requirements for the School Improvement Grants program.)

• New section I.A.3 adds a definition of *persistently lowest-achieving*

[1] An SEA may award school improvement funds to an LEA based only on the Title I participating schools that the LEA identifies in its application. Tier II schools will, thus, not generate any funds because they are not Title I schools in improvement, corrective action, or restructuring; however, the LEA may serve them, through a waiver requested by the SEA or LEA, with the school improvement funds the LEA receives.

schools[2] that incorporates, with the following changes, the proposed definitions of Tier I and Tier II schools:

- An SEA must include Title I participating and Title I eligible, but not participating, high schools that have had a graduation rate, as defined in 34 CFR 200.19(b), of less than 60 percent over a number of years.
- An SEA must identify the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater.
- An SEA has discretion to define ''lack of progress'' in the ''all students'' group to identify its *persistently lowest-achieving schools.*
- New Section I.A.3 adds a definition of *increased learning time* as that term is used in the definitions for the turnaround and transformation models.
- New Section I.A.3 adds a definition of *student growth* as that term is used in describing evaluation systems for teachers and principals in the transformation model.
- Section I.A.2(a) makes the following changes in the turnaround model:
- In new paragraph (a)(1)(i) (proposed (a)(i)), an LEA must give the principal sufficient operational flexibility to implement fully a comprehensive approach to improving student achievement and increasing graduation rates.
- In new paragraph (a)(1)(ii), using locally adopted competencies, an LEA must screen all staff, rehiring no more than 50 percent, and select new staff.
- In new paragraph (a)(1)(vi) (proposed (a)(vi)), an LEA must use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with the State's academic standards.
- New section I.A.2(a)(2) clarifies that a turnaround model may include any of the required and permissible activities under the transformation model and may be a new school model.
- Section I.A.2(b) clarifies that, in the restart model, an LEA may convert a school as well as close and reopen it. This section also adds definitions of CMO and EMO that were in the preamble of the School Improvement Grants NPR.
- Section I.A.2(c) clarifies that, in the school closure model, students from a closed school must be enrolled in higher-achieving schools that should be within reasonable proximity to the closed school and may include, but are not limited to, new schools as well as charter schools.
- Section I.A.2(d) makes the following changes in the transformation model:
- In new paragraph (d)(1)(i)(B) (proposed (d)(i)(A)(*1*)), an LEA must use rigorous, transparent, and equitable evaluation systems for teachers and principals that take into account data on student growth and other factors such as observation-based assessments of performance and collections of professional practice and that are designed and developed with teacher and principal involvement.
- In new paragraph (d)(1)(i)(C) (proposed (d)(i)(A)(*2*)), an LEA must reward staff who increase student achievement and graduation rates and remove those who, after ample opportunities have been provided to improve their professional practice, have not done so.
- In new paragraph (d)(2)(ii)(C), an LEA may provide additional supports and professional development to teachers and principals on implementing effective strategies to support students with disabilities in the least restrictive environment and to ensure that limited English proficient students[3] acquire language skills to master academic content.
- In new paragraph (d)(2)(ii)(D), an LEA may integrate technology-based supports and interventions as part of a school's instructional program.
- In new paragraph (d)(2)(ii)(E)(*1*) (proposed (d)(ii)(B)(*3*)(*a*)), an LEA may offer advanced coursework that includes science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities.
- In new paragraph (d)(2)(ii)(E)(*3*) (proposed (d)(ii)(B)(*3*)(*c*)), an LEA may use, among other strategies, re-engagement strategies, competency-based instruction, and performance-based assessments to increase graduation rates.
- In new paragraph (d)(2)(ii)(E)(*4*), an LEA may establish early-warning systems to identify students who may be at risk of failing to achieve to high standards or graduate.
- In new paragraph (d)(3)(ii)(D), an LEA may expand the school program to offer full-day kindergarten or pre-kindergarten.

Major Changes Made in These Final Requirements

The following summarizes the major changes from the School Improvement Grants NPR that we are making in these final requirements.

- New section I.B.4 clarifies that an SEA may seek a waiver from the Secretary to enable an LEA to use school improvement funds to serve a Tier II secondary school.
- New section I.B.5 clarifies that an SEA may seek a waiver from the Secretary to extend the period of availability of school improvement funds beyond September 30, 2011 so as to make those funds available to the SEA and its LEAs for up to three years.
- New section I.B.6 clarifies that, if an SEA does not seek a waiver under sections I.B.2, I.B.3, I.B.4, or I.B.5, an LEA may seek a waiver.
- New section II.A.2(a) (proposed II.A.2) clarifies that an LEA's application must include, among other items, the specific intervention the LEA will implement in each Tier I and Tier II school it commits to serve; evidence of the LEA's strong commitment to use school improvement funds to implement the selected interventions; a timeline for implementation; and a budget.
- New section II.A.2(b) (proposed II.A.2) prohibits an LEA that has nine or more Tier I and Tier II schools from implementing the transformation model in more than 50 percent of those schools.
- Section II.A.4 clarifies that an LEA's budget may request less than $500,000 for a Tier I or Tier II school if the LEA demonstrates that less funding is needed to fully and effectively implement the selected intervention.
- Section II.A.7 requires an LEA to measure progress on the leading indicators in section III of these requirements and to establish annual goals for student achievement on the State's assessments in both reading/language arts and mathematics to monitor each Tier I and Tier II school that receives school improvement funds.
- New section II.B.2(c) clarifies that an SEA, consistent with State law, may take over an LEA or specific Tier I or Tier II schools in order to implement one of the four interventions.
- New section II.B.2(d) clarifies that an SEA may not require an LEA to implement a particular intervention in

[2] Persistently lowest-achieving schools are the same schools targeted in the Race to the Top competitive grant program and on which States must report under Phase II of the State Fiscal Stabilization Fund under the ARRA.

[3] The Department recognizes that stakeholders often use terms such as ''English language learners'' rather than ''students who are limited English proficient'' when referring to students who are acquiring basic English proficiency and developing academic English skills. However, because the ESEA defines the term ''limited English proficient,'' and both the statute and the implementing regulations use this term, as well as the phrase ''students with limited English proficiency,'' we will continue to use the latter terms in this notice.

one or more schools unless the SEA has taken over the LEA or school.

• New section II.B.3 requires an SEA to post on its Web site all final LEA applications for School Improvement Grants and a summary of those grants that includes the following information: name and National Center for Education Statistics (NCES) identification number of each LEA awarded a grant; amount of each LEA's grant; name and NCES identification number of each school to be served; and type of intervention to be implemented in each Tier I and Tier II school.

• Section II.B.6 requires an SEA to allocate $500,000 per year for each Tier I school unless the SEA determines on a case-by-case basis, considering such factors as school size, the intervention selected, and other relevant circumstances, that less funding is needed to fully and effectively implement the intervention.

• New section II.B.10(a) requires an SEA not serving every Tier I school in a State with FY 2009 school improvement funds to carry over 25 percent of those funds, combine them with FY 2010 school improvement funds (depending on the availability of appropriations), and award those funds to eligible LEAs consistent with these final requirements. That section exempts from this requirement, however, a State that does not have sufficient school improvement funds to serve all the Tier I schools that LEAs in the State commit to serve. If each Tier I school is served with FY 2009 school improvement funds, new section II.B.10(b) permits an SEA to reserve up to 25 percent of its FY 2009 funds and award them in combination with its FY 2010 funds (depending on the availability of appropriations) consistent with the final requirements.

• New section II.B.11 requires an SEA, in identifying Tier I and Tier II schools for purposes of allocating school improvement funds in years following FY 2009, to exclude from consideration any school that was previously identified and in which an LEA is implementing one of the four school intervention models.

• New section II.B.12 requires an SEA that is participating in the ''differentiated accountability pilot'' to ensure that its LEAs use school improvement funds under section 1003(g) of the ESEA in a Tier I or Tier II school consistent with these requirements.

• New section II.B.13 clarifies that, before submitting its application for a School Improvement Grant to the Department, an SEA must consult with its Committee of Practitioners established under section 1903(b) of the ESEA regarding the rules and policies contained therein and may consult with other stakeholders that have an interest in its application.

• Section III makes the following changes to the reporting metrics:

• Modifies the metric on State assessment scores to require SEAs to report on average scale scores on State assessments in reading/language arts and in mathematics, by grade, for the ''all students'' group, for each achievement quartile, and for each subgroup.

• Modifies the metric regarding English proficiency of Title III limited English proficient students by expanding it to apply to all limited English proficient students in Tier I and Tier II schools who attain English proficiency.

• Removes the metric regarding ''AMAO status for LEP students.''

• Modifies the metric on advanced coursework to require SEAs to report the number and percentage of students completing advanced coursework.

• Modifies the metric regarding the number of instructional minutes to require SEAs to report the number of minutes within the school year.

• Clarifies that SEAs must report rates of ''student attendance'' and ''teacher attendance.''

Analysis of Comments and Changes:

In response to our invitation in the NPR, 182 parties submitted comments. An analysis of the comments and any changes in response to those comments follows. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes Included in the State Fiscal Stabilization Fund Phase II Notice of Final Requirements, Definitions, and Approval Criteria

The following discussion summarizes the comments we received, and our responses, on the definitions of Tier I and Tier II schools proposed in the School Improvement Grants NPR that are now included in the definition of *persistently lowest-achieving schools.* This discussion also summarizes the comments and our responses on the four school intervention models proposed in the School Improvement Grants NPR. These comments and responses were first published in the State Fiscal Stabilization Fund Phase II Notice of Final Requirements, Definitions, and Approval Criteria (74 FR 58436 (Nov. 12, 2009)) and are repeated here verbatim.

Definition of Persistently Lowest-Achieving Schools

Comment: A number of commenters recommended alternatives to the process proposed in the [School Improvement Grants] SIG NPR for determining the lowest-achieving five percent of all Title I schools in improvement, corrective action, or restructuring in the State—that is, ''Tier I'' schools. As proposed in the SIG NPR, a Tier I school is a school in the lowest-achieving five percent of all Title I schools in improvement, corrective action, or restructuring in the State, or one of the five lowest-achieving Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater. Under the SIG NPR, to determine this ''bottom five percent,'' a State would have had to consider both the absolute performance of a school on the State's assessments in reading/language arts and mathematics and whether its gains on those assessments for the ''all students'' group over a number of years were less than the average gains of schools in the State for the ''all students'' group.

Several commenters said this proposed process was too prescriptive and recommended that States have more flexibility in determining the lowest-achieving five percent. The commenters specifically suggested permitting States to restrict Tier I schools to schools in restructuring if this group constitutes more than five percent of a State's identified schools; to apply a State's growth model; or to consider such other factors as measures of individual student growth, writing samples, grades, and portfolios. One commenter suggested that the Department determine the lowest-achieving five percent of schools in the Nation rather than have each State determine its own lowest-achieving five percent. Other commenters recommended changes that include taking into account the length of time a school has been designated for restructuring, measuring gains related to English language proficiency, and including newly designated Title I schools (especially secondary schools) that do not yet have an improvement status.

Several commenters also suggested changing the method for determining ''lack of progress,'' including using subgroups rather than the ''all students'' group, measuring progress in meeting adequate yearly progress targets, and narrowing achievement gaps. Another commenter recommended clarifying that, even if a school shows gains greater than the State average, it should

not be considered to be making progress if those gains are not greater than zero.

Finally, several commenters suggested that graduation rates be taken into account in determining the lowest-achieving Title I high schools. One of these commenters suggested including in Tier I all Title I high schools in improvement, corrective action, or restructuring with a graduation rate below 60 percent as well as their feeder middle and junior high schools.

Discussion: In developing our proposed definition of the lowest-achieving five percent of schools for each State as defined in the SIG NPR, we considered several alternatives, including the use of the existing ESEA improvement categories and the possibility of using a measure that would identify the lowest-achieving five percent of schools in the Nation rather than on a State-by-State basis. The goal was to identify a uniform measure that could be applied easily by all States using existing assessment data. We started with Title I schools in improvement, corrective action, or restructuring as the initial universe from which to select the lowest-achieving schools because those are the schools eligible to receive SIG funds. ESEA improvement categories were deemed too dependent on variations in individual subgroup performance, rather than the overall performance of an entire school, to reliably identify our worst schools. A nationwide measure, although appealing from the perspective of national education policy, would likely have identified many schools in a handful of States and few or none in the majority of States, making it an inappropriate guide for the most effective use of State formula grant funds.

In general, we believe that the changes and alternatives suggested by commenters would add complexity to the method for determining the lowest-achieving five percent of schools without meaningfully improving the outcome. With the changes noted subsequently, we believe the definition proposed in the SIG NPR is straightforward, can be easily applied using data available in all States, and can produce easily understood results in the form of a list of State's lowest-achieving schools that have not improved in a number of years.

Regarding the determination of whether a school is making progress in improving its scores on State assessments, the commenters highlighted the complexity and potential unreliability of measuring year-to-year gains on such assessments. In response, we are simplifying this aspect of the definition to give SEAs greater flexibility in determining a school's lack of progress on State assessments over a number of years.

We also agree that it is important to include Title I high schools in improvement, corrective action, or restructuring that have low graduation rates in the definition. The Secretary has made addressing our Nation's unacceptably high drop-out rates—an estimated 1 million students leave school annually, many never to return—a national priority. In recognition of this priority, and in response to recommendations from commenters, we are including in the definition any Title I high school in improvement, corrective action, or restructuring that has had a graduation rate that is less than 60 percent over a number of years.

Accordingly, we have made these changes and incorporated the process for determining the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring—also known as Tier I schools for purposes of SIG funds—into a new definition of *persistently lowest-achieving schools* in this notice.

Changes: The Department has added a definition of *persistently lowest-achieving schools* to this notice that incorporates the process described in the SIG NPR for determining the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring (or the lowest-achieving five such schools, whichever number of schools is greater) (''Tier I'' schools for purposes of SIG). This new definition also includes any Title I high school in improvement, corrective action, or restructuring that has had a graduation rate of less than 60 percent over a number of years (as will the ''Tier I'' definition for SIG purposes). We have removed language in proposed section I.A.1.a(ii) of the SIG NPR defining ''a school that has not made progress.''

Comment: Numerous commenters expressed support for including chronically low-achieving secondary schools that are eligible for, but not receiving Title I funds as Tier II schools, as proposed in section I.A.1.b in the SIG NPR, including one commenter who suggested that LEAs be required to fund Tier II schools. Other commenters, however, opposed the use of Title I funds in non-Title I schools and recommended that other funding be identified to serve those schools or stated that the inclusion of those schools is more appropriately addressed in the Title I reauthorization. One commenter suggested that it would not be appropriate to provide Title I funds to such schools when the SIG NPR would restrict the number of Title I schools that can be served in Tier I.

Discussion: We believe that low-achieving secondary schools often present unique resource, logistical, and pedagogical challenges that require rigorous interventions to address. Yet, many such schools that are eligible to receive Title I funds are not served because of competing needs for Title I funds within an LEA. The large amounts of ARRA funds—available through Stabilization, Race to the Top, and SIG—present an opportunity to address the needs of these low-achieving secondary schools. Accordingly, we have continued in this notice to include secondary schools that are eligible for, but do not receive, Title I funds in the definition of the persistently lowest-achieving schools in a State.

As proposed in the SIG NPR, such secondary schools would have been eligible if they were equally as low-achieving as a Tier I school. We realized that this standard was too vague, particularly in light of the rigorous interventions that would be required if an SEA identified, and an LEA decided to serve, such a school. As a result, we have changed the definition to include secondary schools that are eligible for, but do not receive, Title I funds and that are among the lowest-achieving five percent of such schools in a State (or the lowest five such schools, whichever number of schools is greater). An SEA must identify these schools using the same criteria as it uses to identify the lowest-achieving Title I schools in improvement, corrective action, and restructuring.

For the reasons noted earlier in this notice, we have also included in the definition any high school that is eligible for, but does not receive, Title I funds and that has had a graduation rate that is less than 60 percent over a number of years.

Changes: The Department has added a definition of *persistently lowest-achieving schools* to this notice that incorporates the lowest-achieving five percent of secondary schools in a State that are eligible for, but do not receive, Title I funds (or the lowest-achieving five such schools, whichever number of schools is greater) (''Tier II'' schools for purposes of SIG). This new definition also includes any high school that is eligible for, but does not receive, Title I funds that has had a graduation rate of less than 60 percent over a number of years (as will the ''Tier II'' definition for SIG purposes). We have removed language in proposed section I.A.1.b of the SIG NPR that required a comparison of the achievement of secondary schools to Tier I schools.

General Comments on the Four Intervention Models

Comment: One commenter supported the Secretary's intent in proposing the four interventions in the SIG NPR. The commenter noted that the majority of SIG funds are intended to target the very lowest-achieving schools in the Nation—schools that have not just missed their accountability targets by narrow margins or in a single subgroup. Rather, they are schools that have ''profoundly fail[ed]'' their students ''for some time.'' Accordingly, the commenter acknowledged that the four interventions are appropriately designed to engage these schools in bold, dramatic changes or else to close their doors.

Conversely, several commenters suggested that the four interventions are too prescriptive and do not leave room for State innovation and discretion to fashion similarly rigorous interventions that may be more workable in a particular State. The commenters noted that for some school districts, particularly the most rural districts, none of the interventions may be feasible solutions. In addition, several commenters rejected the idea that there should be any Federal requirements governing struggling schools. The commenters suggested that schools in need of improvement be permitted to engage in self-improvement strategies tailored to each individual school's needs as determined at the local level based on local data, rather than being mandated to adopt specific models by the Federal Government.

Discussion: We disagree that the four models limit State innovation. Each model provides flexibility and permits LEAs to develop approaches that are tailored to the needs of their schools within the broad context created by each model's requirements. We do not believe that any one model is appropriate for all schools; rather, it is the Department's intention that LEAs select the model that is appropriate for each particular school.

Changes: None.

Comment: Several commenters suggested adding a fifth intervention option. One commenter, for example, suggested permitting States to propose an alternative, but rigorous, intervention model for approval through a peer review process. The commenter noted that whatever accountability measure is adopted in the SIG notice of final requirements should serve to ensure that the model is held accountable for results. Another commenter suggested a ''scale up'' model, in which an LEA could use SIG funds to expand interventions with documented success in producing rapid improvement in student achievement within that LEA or in another LEA with similar demographics and challenges. Yet another commenter suggested adding a ''supported transformation'' model to accommodate, in particular, the needs of children in low-achieving schools in small, rural communities that lack the capacity to transform their schools. The commenter identified the need for an SEA to build the capacity of struggling LEAs by working to develop models for intervention, to identify specific evidence-based intervention strategies, and to provide ongoing, intensive technical, pedagogical, and practical assistance so as to increase LEAs' capacity to assist their low-achieving schools.

Discussion: We included the four school intervention models in the SIG NPR after an extensive examination of available research and literature on school turnaround strategies and after outreach to practitioners. Our goal, which we believe was achieved, was to identify fundamental, disruptive changes that LEAs could make in order to finally break the long cycle of educational failure—including the failure of previous reforms—in the Nation's persistently lowest-achieving schools. We also believe that these models, despite their limited number, potentially encompass a wide range of specific reform approaches, thus negating the need for a ''fifth model.'' We understand, for example, that school closure may not work in some LEAs, but that leaves the turnaround, restart, or transformation models as possible options for them. We also know that not all States have a charter school law, limiting the restart options available to LEAs in such States. However, even where charter schools are not an option, an LEA could work with an Education Management Organization (EMO) to restart a failed school or could pursue one of the other three intervention models. And we understand that some rural areas may face unique challenges in turning around low-achieving schools, but note that the significant amount of funding available to implement the four models will help to overcome the many resource limitations that previously have hindered successful rural school reform in many areas.

The four school intervention models described in the SIG NPR also are internally flexible, permitting LEAs to develop their own approaches in the broad context created by the models' requirements. For example, the turnaround and restart models focus on governance and leadership changes, leaving substantial flexibility and autonomy for new leadership teams to develop and implement their own comprehensive improvement plans. Even the transformation model includes a wide variety of permissible activities from which LEAs may choose to supplement required elements, which are primarily focused on creating the conditions to support effective school turnarounds rather than the specific methods and activities targeting the academic needs of the students in the school.

We also note that over the course of the past eight years, States and LEAs have had considerable time, and have been able to tap new resources, to identify and implement effective school turnaround strategies. Yet they have demonstrated little success in doing so, particularly in the Nation's persistently lowest-achieving schools, including an estimated 2,000 ''dropout factories.'' Under the ESEA, States have been required to set up statewide systems of support for LEA and school improvement; to identify low-achieving schools for a range of improvement, corrective action, and restructuring activities; and to use the school improvement reservation under section 1003(a) of the ESEA to fund such improvement activities. However, the overall number of schools identified for improvement, corrective action, and restructuring continues to grow; in particular, the number of chronically low-achieving Title I schools identified for restructuring has roughly tripled over the past three years to more than 5,000 schools. SEAs have thus far helped no more than a handful of these schools to successfully restructure and exit improvement status, in large part, we believe, because of an unwillingness to undertake the kind of radical, fundamental reforms necessary to improve the persistently lowest-achieving schools.

Finally, although we believe this recent history of failed school improvement efforts justifies using ARRA SIG funds to leverage the adoption of the more far-reaching reforms required by the four school intervention models, we note that Part A of Title I of the ESEA continues to make available nearly $15 billion annually, as well as an additional $10 billion in fiscal year 2009 through the ARRA, that SEAs and LEAs may use to develop and implement virtually any reform strategy that they believe will significantly improve student achievement and other important educational outcomes in Title I schools. In particular, we would applaud State

and local efforts to use existing Title I funds to scale up successful interventions or to build State and local capacity to develop and implement other promising school intervention models. For all of these reasons, we decline to add a fifth school intervention model to this notice.

Changes: None.

Turnaround Model

Principal and Staff Replacement

Comment: Many commenters opposed replacing principals and staff as part of the turnaround model. Although several commenters acknowledged that poor leadership and ineffective staff contribute to a school's low performance, a majority claimed that staff replacement has not been established as an effective reform strategy, others stated that such a strategy is not a realistic option in many communities that already face teacher and principal shortages, and one commenter suggested that replacement requirements associated with turnaround plans would discourage teachers and principals from working in struggling schools.

In addition, many commenters opposed sanctioning principals and staff, partly because, as one commenter claimed, the turnaround model assumes that most problems in a school are attributable to these individuals. One stated that principals face ''trying'' circumstances and another stated that the proposed requirements ignore the ''vital role'' that principals play in high-need schools. These commenters stated that other factors—such as poverty, lack of proper support, and tenure and collective bargaining laws—should be addressed before decisions are made to replace principals and staff. One commenter claimed that principals and teachers in low-achieving schools could perform their jobs if they are given adequate training and support and working conditions are improved. Another opposed the replacement requirement because the commenter believed a stable and consistent staff is a key factor in school improvement.

Discussion: We understand that replacing leadership and staff is one of the most difficult aspects of the four models; however, we also know that many of our lowest-achieving schools have failed to improve despite the repeated use of many of the strategies suggested by the commenters. The emphasis of the ARRA on turning around struggling schools also reflects, in part, an acknowledgement by the Congress that past efforts have had limited or no success in breaking the cycle of chronic educational failure in the Nation's persistently lowest-achieving schools.

Accordingly, the Department believes that dramatic and wholesale changes in leadership, staffing, and governance—such as those required by the turnaround model—are an appropriate intervention option for creating an entirely new school culture that breaks a system of institutionalized failure. Although we acknowledge the possibility that the turnaround model could discourage some principals and teachers from working in the lowest-achieving schools, others will likely be attracted by the opportunity to participate in a school turnaround with other committed staff. In addition, other Federal programs, such as the Teacher Incentive Fund and Race to the Top programs, are helping to create incentives and provide resources that can be used to attract and reward effective teachers and principals and improve strategies for recruitment, retention, and professional development.

Changes: None.

Comment: A number of commenters recommended changes to the principal and staff replacement requirements. One commenter proposed a detailed ''fifth model'' that focused upon providing additional support to teachers by improving working conditions, such as reducing class size and providing professional development opportunities. Others recommended (1) providing a principal with the autonomy to make his or her own firing and hiring decisions instead of requiring the replacement of 50 percent of the staff; (2) allowing staff to reapply for their positions; (3) retaining principals who were recently hired; (4) providing principals with a ''window'' of opportunity to improve their schools before being replaced; (5) suggesting that the replacement requirement extend to superintendents and boards of education; (6) retaining at least 50 percent of current staff who reapply and meet all of the requirements of the redesigned school; and (7) focusing on staff qualifications and putting in place effective staff rather than on a particular target level of replacements.

Discussion: We agree with some of the changes to the turnaround model suggested by commenters. For example, new language in paragraph (a)(1)(i) of the turnaround model recognizes the vital role played by the principal and acknowledges that new principals need authority to make key changes required to turn around a failing school. Under this new language, the new principal of a turnaround school would have ''sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates.''

We also recognize that the staff selected for a turnaround school must have the skill and expertise to be effective in this context. We are adding language clarifying that all personnel must be screened and selected based on locally adopted competencies to measure their effectiveness in a turnaround environment.

In addition, while the SIG NPR would have required an LEA to replace at least 50 percent of the staff of a turnaround school, new paragraph (a)(1)(ii)(A) of the turnaround model requires an LEA, after screening all staff using locally adopted competencies, to rehire no more than 50 percent of the school's staff. Further, some commenters appear to have overlooked proposed section I.B.1 in the SIG NPR, which would give LEAs flexibility to continue implementing interventions begun within the last two years that meet, in whole or in part, the requirements of the turnaround, restart, or transformation models and, thus, would in many cases allow an LEA to retain a recently hired principal in a turnaround school. We are retaining this flexibility provision in this notice.

Finally, the turnaround model includes significant provisions aimed at supporting teachers. For example, the SIG NPR called for ''ongoing, high-quality, job-embedded professional development to staff,'' as well as increased time for collaboration and professional development for staff. These supports for teachers and other staff are retained in this final notice.

Changes: We have modified the provisions in the turnaround model in paragraph (a)(1)(i) to give the new principal of a turnaround school ''sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates.'' As described earlier, we have also revised paragraph (a)(1)(ii) to require that an LEA use locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students. In addition, instead of the requirement that an LEA replace ''at least 50 percent of the staff'' in a turnaround school, paragraph (a)(1)(ii)(A) of the definition requires an

LEA to screen and rehire ''no more than 50 percent'' of the existing staff.

Comment: Numerous commenters expressed concerns that a national shortage of principals and teachers would prevent successful implementation of the turnaround model. Two commenters stated that, in order to replace half of the staff as required by the turnaround model, an LEA would likely be forced to hire less experienced teachers and rely on emergency credentials or licensure to fully staff a turnaround school. One commenter claimed that research shows that large pools of available applicants are essential for successful replacement of principals and teachers. Another commenter stated that there is a ''national shortage of transformational leaders'' who can lead turnaround schools. Further, many commenters claimed that replacing half of a school's staff would be difficult or even impossible in rural schools and small communities. One commenter asserted that the shortage of teachers in rural areas would disqualify these LEAs from applying for school improvement funds. Another stated that even with recruitment incentives it would be difficult to fill staff vacancies. One commenter urged the Secretary to take such shortages into account before requiring ''blanket firings'' of teachers. In addition, several commenters observed that chronically low-performing schools already suffer from a number of vacancies due to high staff turnover rates. In fact, one commenter believed replacing 50 percent of the staff was not a ''tough'' consequence because these schools already experience high turnover.

These concerns led several commenters to recommend flexibility regarding the staff replacement requirement of the turnaround model, including the opportunity to request a waiver if an LEA could demonstrate an inability to fill vacancies, and a required evaluation before principals and staff can be replaced. Other commenters opposed the replacement of principals without consideration of such factors as years of experience and district-level support, recommended a three-year window in which to make replacement decisions based upon multiple measures, and suggested the provision of high-quality professional development before replacing any staff.

Discussion: We recognize that the replacement requirement will present challenges for LEAs, particularly in rural areas, where highly effective principals and teachers capable of leading educational transformation may be in short supply; however, the difficulty of identifying new qualified teachers and school leaders for a turnaround school must be measured against the enormous human and economic cost of accepting the status quo for the Nation's persistently lowest-achieving schools. We simply cannot afford to continue graduating hundreds of thousands of students annually who are unprepared for either further education or the workforce, or to permit roughly one million students to drop out of high school each year, many of them never to return to school. Instead, States and LEAs must work together to recruit, place, and retain the effective principals and staff needed to implement the turnaround model. The Department is supporting these efforts through Federal grant programs that can provide resources for improving strategies used to recruit effective principals and teachers, such as the Teacher Incentive Fund program, which helps increase the number of effective teachers teaching poor, minority, and disadvantaged students in hard-to-staff subjects and schools.

Finally, we wish to clarify that the requirements for the turnaround model do not require ''blanket firings'' of staff. The Department agrees that staff should be carefully evaluated before any replacement decisions are made and has added new language requiring LEAs to use ''locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students.'' If required by State laws or union contracts, principals and staff may have to be reassigned to other schools as necessary.

Changes: As described earlier, we have revised paragraph (a)(1)(ii) to require that an LEA use locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students. The LEA must then screen all existing staff before rehiring no more than 50 percent of them.

Comment: Numerous commenters claimed that there is little research supporting the replacement of leadership and staff in school turnaround efforts. One commenter cited a 2008 Institute of Education Sciences (IES) report, ''Turning Around Chronically Low-Performing Schools,'' that, according to the commenter, recommends that decisions to remove staff should be made on an individual basis. Several others also asserted that the proposed requirement to replace at least 50 percent of staff was arbitrary, with two commenters recommending instead that the Department ''empower the turnaround principal with the autonomy to hire, based on merit, for every position in the school.''

Discussion: We are not claiming that merely replacing a principal and 50 percent of a school's staff is sufficient to turn around a low-achieving school. Although principal and staff replacement are key features of the turnaround model proposed in the SIG NPR, they are not the only features. The strength of the turnaround model lies in its comprehensive combination of significant staffing and governance changes, an improved instructional program, ongoing high-quality professional development, the use of data to drive continuous improvement, increased time for learning and for staff collaboration, and appropriate supports for students. The staffing and governance changes are intended primarily to create the conditions within a school, including school climate and culture, that will permit effective implementation of the other elements of the turnaround model. Dramatic changes in leadership, staff, and governance structure help lay the groundwork to create the conditions for autonomy and flexibility that are associated with successful turnaround efforts. Accordingly, we decline to remove the requirement for replacing staff in a turnaround model.

Changes: None.

Comment: Many commenters claimed that teacher tenure, State collective bargaining laws, and union contracts prevent school administrators from replacing staff as required by the turnaround model. Several commenters stated that union contracts would force school administrators to reassign dismissed teaching staff to other schools, and the turnaround model would not solve the problem of removing ineffective teachers from the classroom. One commenter asked if an LEA would have to negotiate staff replacement with the union or if the Federal grant requirements supersede State due process laws. One commenter noted that the Department would have to provide ''involuntary transfer authority'' to LEAs in order for them to implement the turnaround model in collective bargaining States.

Several commenters called for the Department to foster collaboration with teacher unions as well as the larger community. One of these commenters claimed that collaboration ''increases leadership and builds professionalism'' and recommended that evidence of collaboration be documented. Another asserted the involvement of school-based personnel in decision-making is key to the successful implementation of

school interventions. Another recommended that an LEA seek ''feedback'' from all stakeholders, including students, parents, and unions, as to whether an intervention is ''feasible or warranted.''

Discussion: We recognize that collective bargaining agreements and union contracts may present barriers to implementation of the turnaround model; however, we do not believe these barriers are insurmountable. In particular, drawing upon pockets of success in cities and States across the country, the Secretary believes LEAs and unions can work together to bring about dramatic, positive changes in our persistently lowest-achieving schools. Accordingly, the Department encourages collaborations and partnerships between LEAs and teacher unions and teacher membership associations to resolve issues created by school intervention models in the context of existing collective bargaining agreements. We also encourage LEAs to collaborate with stakeholders in schools and in the larger community as they implement school interventions.

Changes: None.

Comment: Many commenters stated that the term ''staff'' was not clearly defined. One commenter presumed it excluded maintenance, food services, and other support staff. Another stated that the Department should allow LEAs to develop their own definition of ''staff,'' and permit LEAs to determine whether non-instructional staff should be included in the replacement calculus. Two commenters also requested greater clarity regarding the meaning of ''new governance.''

Discussion: We believe that, in high-achieving schools facing the most challenging of circumstances, every adult in the school contributes to the school's success, including the principal, teachers, non-certificated staff, custodians, security guards, food service staff, and others working in the school. Conversely, in a persistently lowest-achieving school, we believe that no single group of adults in the school is responsible for a culture of persistent failure. For this reason, our general guidance is that an LEA should define ''staff'' broadly in developing and implementing a turnaround model. The Department declines to define the term ''staff'' in this notice, but plans to issue guidance that will clarify this and other issues related to the turnaround model. As for the term ''governance,'' the language in paragraph (a)(1)(v) suggests a number of possible governance alternatives that may be adopted in the context of a turnaround model. The Department declines to provide a more specific definition in order to permit LEAs the flexibility needed to adopt a turnaround governance structure that meets their local needs and circumstances.

Changes: None.

Comment: Several commenters asked that the Department consider the possible negative consequences of replacing staff on a school and community, with one commenter suggesting that replacing half of the staff could result in more damage ''to a fragile school than no change at all.'' Another commenter stated that maintaining a consistent staff is a key to school success.

Discussion: The Secretary disagrees that implementing a turnaround model would be worse than ''no change at all.'' The schools that would implement a turnaround model have, by definition, persistently failed our children for years, and dramatic and fundamental change is warranted. In addition, as stated elsewhere in this notice, the commenters overlook the fact that the other options—the transformation, school closure, and restart models—do not require replacement of 50 percent of a school's staff. If an LEA believes that it cannot successfully meet the requirements of the turnaround model, we recommend that it consider one of the other three options.

Changes: None.

Comment: Numerous commenters stated that decisions regarding school restructuring are best decided on the local, rather than the Federal, level. One commenter opposed the requirements for the turnaround model as being too prescriptive, and another recommended that the local school board be provided with the discretion to determine how best to implement the turnaround model. One commenter agreed that ''ineffective staff and leadership should be replaced in order for school improvement to work,'' but stated that the turnaround model's ''one-size-fits-all formula may not be the best approach for all schools.'' Two commenters specifically stated that the decision to remove a principal and staff should be determined by a local school board. Similarly, another commenter noted that decisions to replace a principal and staff should be based upon ''local data'' rather than Federal requirements that are not tailored to an individual school's needs. One of these commenters stated that local decision-making is particularly important if a school has been underperforming for a period longer than the ''principal's tenure or if the principal has begun a transformative process that could be harmed by a leadership change.''

Discussion: An LEA is free to exercise local control and use local data and leadership to determine which of the four school intervention models to follow in turning around a persistently lowest-achieving school. However, after nearly a decade of broad State and local discretion in implementing, with little success, the school improvement provisions of the ESEA, the Department believes, for the purpose of this program, it is appropriate and necessary to limit that discretion and require the use of a carefully developed set of school intervention models in the Nation's lowest-achieving schools. In particular, the turnaround and transformation models include a combination of staffing, governance, and structural changes with specific comprehensive instructional reforms that the Department believes hold great promise for effective investment of the $3 billion provided for the SIG program by the ARRA.

Changes: None.

Relationship Between Turnaround and Transformation Models

Comment: Several commenters believed the turnaround model lacked sufficient detail and did not provide adequate direction to LEAs attempting to implement the model. In contrast, several commenters appreciated the level of detail contained in the transformation model and suggested that the turnaround model provide a similar level of detail. Some of these commenters recommended that the turnaround model incorporate some of the specific provisions contained in the transformation model. For example, one commenter suggested that the turnaround model include the transformation model's provisions regarding implementation of instructional changes. Another commenter specifically recommended that the turnaround model incorporate the transformation model's criteria for teacher effectiveness.

Discussion: We agree that the turnaround model in the SIG NPR lacked clarity and potentially created confusion about whether applicants could draw upon permissible activities described in the transformation model. The Department did not intend to limit LEA discretion in adapting elements of the transformation model to the turnaround model. Accordingly, we are adding new language in paragraph (a)(2)(i) to clarify that an LEA implementing the turnaround model may implement any of the required and permissible activities under the transformation model.

Changes: We have clarified in paragraph (a)(2)(i) that an LEA implementing a turnaround model may also implement other strategies such as ''[a]ny of the required and permissible activities under the transformation model.'' In addition, we have made changes in the turnaround model that correspond to changes we made in response to comments on the transformation model. The specific changes are noted subsequently in this notice in our discussion of comments on the transformation model.

Restart Model

Comment: Many commenters opposed the restart model described in the SIG NPR because, they claimed, charter schools generally do not perform better than regular public schools. In particular, these commenters cited recent research from the Center for Research on Education Outcomes (CREDO) at Stanford University showing that fewer than one-fifth of charter schools demonstrated gains in student achievement that exceeded those of traditional public schools. One commenter also mentioned a RAND study highlighting the low performance of charter schools in Texas and a study by researchers at Johns Hopkins University showing that most EMO-operated schools were outperformed by traditional public schools. Most of these commenters proposed broadening or strengthening the restart option, but one commenter recommended removing it from the list of permitted school intervention models. One commenter claimed that, where charter schools had raised student achievement, in most cases it was attributable to high student attrition rates brought about by demanding school schedules and behavioral rules that did not work for all students. A few commenters noted either that some States do not allow charter schools or that the restart model would be unlikely to work in rural areas. Several commenters also opposed the restart model because it might displace students and disrupt existing efforts to build community schools; another commenter recommended that any planning and reorganization for a restart model take place during the school year, while students remain in the school, so that there would be no disruption in services if the school were closed and then reopened as a restart school.

Discussion: We acknowledge that the available research on the effectiveness of charter schools in raising student achievement is mixed, that some State laws significantly limit the creation or expansion of charter schools, and that smaller communities, particularly in rural areas, may not have sufficient access to providers or teachers to support the creation of charter schools. However, there are many examples of high-quality charter schools, and the Secretary believes very strongly that high-achieving charter schools can be a significant educational resource in communities with chronically low-achieving regular public schools that have failed to improve after years of conventional turnaround efforts. Although they are not a ''silver bullet'' for failing schools or communities, a more balanced view of the results produced by charter schools suggests that they offer promising and proven options for breaking the cycle of educational failure and fully merit inclusion in the restart model.

The Department also recognizes the concerns expressed by commenters about the potential disruption to students, parents, and communities that may be connected with a restart plan that involves closing and then reopening a school. To help address this concern, we are adding language to this notice allowing a school conversion—and not just closing and reopening a school—to qualify as an acceptable restart model.

At the same time, the Department emphasizes that just as the restart model is one of four school intervention models supported by this notice, charter schools are just one option under the restart model. Contracting with an EMO is another restart option that may provide sufficient flexibility in States without charter school laws or in rural areas where few charter schools operate. An EMO also may be able to develop and implement a plan that permits students to stay in their school while undergoing a restart. For example, some EMOs hired to turn around a low-achieving school may begin planning for the turnaround in late winter or early spring, hire and train staff in late spring and early summer, reconfigure and re-equip the school—including the acquisition of curricular materials and technology—during the summer, and then reopen promptly in the fall, resulting in minimal, if any, disruption to students and parents.

Changes: We have changed the language in paragraph (b) to define a restart model as one in which an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an EMO that has been selected through a rigorous review process.

Defining Rigorous Review

Comment: Several commenters supported the requirement in the SIG NPR that LEAs select a charter school operator, a CMO, or an EMO through a ''rigorous review process.'' In general, these commenters viewed this requirement as essential to ensuring the quality of a restart model. Commenters also asked for clarification of how such a review would be conducted, including guidance for SEAs and LEAs and opportunities for parent and community involvement in reviewing and selecting a restart school operator. One commenter raised a concern about how it would be possible to review rigorously a new charter school operator, CMO, or EMO.

Discussion: We believe that SEAs and LEAs should have flexibility to develop their own review processes for charter school operators, CMOs, and EMOs, based both on local circumstances and on their experiences in authorizing charter schools. We will provide guidance and technical assistance in this area, but will leave final decisions on review requirements to SEAs and LEAs. We believe flexibility in defining ''rigorous review'' is warranted because of the wide variation in local need and community context as well as in the size, structure, and experience of charter school operators, CMOs, and EMOs.

Changes: None.

Clarifying Restart Operator Definitions

Comment: One commenter recommended that the Department provide a definition of CMO and EMO, while other commenters suggested changes or requested clarification of the definitions of CMO and EMO provided in the SIG NPR. One commenter recommended defining a CMO as an organization that ''operates or manages a school or schools'' rather than, as in the SIG NPR, ''operates charter schools.'' This commenter also urged the Department to define ''whole school operations'' as applied to the definition of EMO. Another commenter recommended that the Department include charter schools operated or managed by an LEA in the definition of CMO. One commenter also urged the Department to establish reporting requirements for CMOs and EMOs, including data on student achievement, the impact of reforms on student achievement, information on how CMOs and EMOs serve students with disabilities, and other accountability data. Finally, two commenters also suggested that the Department award funding directly to CMOs and EMOs to

pay for planning, outreach, and training staff for a restart effort.

Discussion: We included definitions of CMO and EMO in the preamble of the SIG NPR and are adding these definitions in the definition of *restart model* for clarification purposes. We agree that the definition of CMO should include organizations that operate or manage charter schools and have made this change to the CMO definition in this notice accordingly. Although a charter school may exist as part of an LEA, it is unlikely that the LEA would be responsible for operating or managing the charter school. Therefore, we have not expressly included LEAs in the definition of CMO. We are retaining the EMO definition from the SIG NPR, and believe the emphasis on ''whole-school operation'' is sufficient to distinguish EMOs from other providers that may help with certain specific aspects of school operation and management, but that do not assume full responsibility for the entire school, as is required by the restart model.

The Department does not believe it is necessary to add new or additional reporting requirements for EMOs and CMOs, as their performance will be captured by the reporting metrics established in the final SIG notice. More specifically, SEAs and LEAs already must report on the intervention model used for each persistently lowest-achieving school, as well as outcome data for those schools, including outcome data disaggregated by student subgroups. As for providing SIG funding directly to CMOs and EMOs, the SIG program is a State formula grant program, and the Department must allocate funds to States in accordance with the requirements of section 1003(g) of the ESEA. Moreover, the only eligible SIG subgrantees are LEAs.

Changes: We have included the definitions of CMO and EMO in the definition of *restart model.* We have also modified the definition of CMO slightly to reflect the fact that a CMO may either operate or manage charter schools.

Flexibility Under the Restart Model

Comment: Several commenters recommended greater flexibility for LEAs implementing the restart model, including options to create magnet schools or ''themed'' schools. Another commenter, claiming that few charter school operators, CMOs, or EMOs have experience in ''whole school takeover,'' recommended permitting a phase-in approach to charter schools that would allow a charter school operator to start with two or three early grades and gradually ''take over'' an entire school.

Discussion: We believe that considerable flexibility regarding the type of school program offered is inherent in the restart model, which focuses on management and not on academic or curricular requirements. For example, restart operators would be free to create ''themed'' schools, so long as those schools permit enrollment, within the grades they serve, of any former student who wishes to attend. Additionally, LEAs have the flexibility to work with providers to develop the appropriate sequence and timetable for a restart partnership. Whether through ''phase-in'' models or complete conversions, the Department encourages SEAs and LEAs to take into account local context and need in making these decisions.

Changes: None.

Comment: Many commenters asked for clarification regarding various aspects of the restart model, including whether it includes conversion of existing schools, who would have authority over the operator of restart schools (*e.g.,* LEA, SEA, independent governing board, or a State or local authorizer), and whether a group of individuals (*e.g.,* teachers) could manage a restart school.

Discussion: We have changed the definition of restart model to clarify that it includes conversion of an existing school and not just strategies involving closing and reopening a school. In particular, we believe that conversion approaches may permit implementation of a restart model with minimal disruption for students, parents, and communities. In general, an LEA would be responsible for authorizing or contracting with charter school operators, CMOs, or EMOs for implementation of a restart model. The precise form of this contract or agreement would be up to State or local authorities and could include each of the alternatives mentioned by the commenters. However, regardless of the lines of authority, autonomy and freedom to operate independently from the State or LEA are essential elements of the restart model. A group of individuals, including teachers, would be eligible to manage a restart school so long as they met the local requirements of the rigorous review process included in the restart model.

Changes: We have revised the first sentence of the definition of restart model to read as follows: ''A restart model is one in which an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process.''

Comment: Several commenters recommended that the Department include specific elements of the turnaround and transformation models in the restart model, including improved curricula and instruction, student supports, extended learning time, community involvement, and partnering with community-based organizations. Similarly, one commenter noted that a restart model might permit a school to reopen as a charter school while changing little inside the school and urged the Department to require restart schools to use a model of reform that has been proven effective or that includes evidence-based strategies. Another commenter urged the Department to encourage use of the restart model to better serve high-risk students and help dropouts reconnect to school.

Discussion: We note that restart models could include nearly all of the specific reform elements identified under the turnaround and transformation models, but decline to require the use of any particular element or strategy. The restart model is specifically intended to give operators flexibility and freedom to implement their own reform plans and strategies. The required rigorous review process permits an LEA to examine those plans and strategies—and helps prevent an operator from assuming control of a school without a meaningful plan for turning it around—but should not involve mandating or otherwise requiring specific reform activities. However, the review process may require operators to demonstrate that their strategies are informed by research and other evidence of past success.

Changes: None.

Comment: One commenter recommended requiring the review process for CMOs and EMOs to include curriculum and staffing plans for meeting the needs of subgroups of students, including students with disabilities and limited English proficient students. Another commenter suggested that the review process include examining the extent to which a restart operator sought to ensure that restart schools would serve all former students by requiring States to collect data on the number of students from low-income families, students with disabilities, and limited English proficient students served by a restart school compared with the number of those students served by the school it replaced.

Discussion: Restart operators, by definition, have almost complete

freedom to develop and implement their own curricula and staffing plans, and the Department declines to place limits in this area in recognition of the core emphasis of the restart model on outcomes rather than inputs. The requirement to enroll any former student who wishes to attend the school will help to ensure that charter school operators, CMOs, and EMOs include serving all existing groups of students in their restart plans. Moreover, the effectiveness of these curricula and staff changes in meeting the needs of subgroups of students, including students with disabilities and limited English proficient students, will be measured by the metrics in the final SIG notice, which will include disaggregated achievement data by student subgroup. We encourage SEAs and LEAs to analyze these data to ensure that subgroups of students are properly included in restart schools and that their needs are addressed.

Changes: None.

Comment: A few commenters expressed concern that charter schools are not subject to the same oversight, regulation, or accountability as are regular public schools. Other commenters emphasized the importance, particularly in the case of charter school conversions, of ensuring autonomy, flexibility, and freedom from district rules and collective bargaining agreements, so that charter schools can implement their own cultures and practices.

Discussion: The restart model is specifically intended to give providers freedom from the rules and regulations governing regular public schools, in recognition of the fact that, while such rules and regulations may be effective in requiring certain kinds of inputs, such as teacher qualification requirements or a uniform length of the school day or year, they have not been demonstrated to have a significant impact on educational outcomes. Moreover, many successful charter schools have achieved outstanding results by changing these inputs, such as by hiring non-traditional but skilled teachers and by extending the length of the school day. The Department believes that the outcome metrics established in the final SIG notice will ensure accountability for the performance of restart schools.

Changes: None.

Comment: One commenter expressed concern that LEAs could use the restart model to close an existing charter school that, while successful in raising student achievement, remained in school improvement status under section 1116 of the ESEA.

Discussion: An existing charter school that is raising student achievement would be unlikely, under the requirements for identifying a State's persistently lowest-achieving schools, to be identified for school intervention, because those requirements include not only low levels of achievement, but also making little or no progress on improving those low levels of achievement in recent years. Moreover, this notice, as did the SIG NPR, provides flexibility for a school, such as a recently converted charter school that meets the requirements of the restart model, to use SIG funds to continue or complete reforms it began within the prior two years. On the other hand, it is possible, and in some cases appropriate, for an LEA to close a charter school that is not serving its students well and implement a new intervention model in the school.

Changes: None.

School Closure

Comment: A number of commenters expressed their general views regarding whether closing schools is an appropriate intervention for raising student achievement. Although no commenter advocated extensive use of this intervention, several acknowledged that school closure is sometimes necessary, particularly for schools with a long history of very low achievement, and noted that some States and LEAs have used this strategy successfully. Other commenters, however, expressed a number of logistical concerns with this intervention. Some noted that closing schools is often not feasible in rural areas in which the distance between schools is too great to make practical enrolling students from a closed school in higher-achieving schools. Others noted that many LEAs do not have multiple schools at the same grade level in which to enroll students from a closed school. Still others noted capacity issues that would prevent schools from accommodating additional students or the lack of high-achieving schools in which to enroll students from a closed school. One commenter noted that this intervention would not be feasible on a large scale in large, urban LEAs with limited resources and substantial numbers of low-achieving students. Another commenter recommended that this intervention be limited to those LEAs with the capacity to enroll affected students in other, higher-achieving schools.

Discussion: School closure is just one of four school intervention models from which an LEA may choose to turn around or close its persistently lowest-achieving schools, and the Department recognizes that it may not be appropriate or workable in all circumstances. To clarify this, we have revised the definition of *school closure* in this notice to clarify that this option is viable when there are re-enrollment options in higher-achieving schools in the LEA that are within reasonable proximity to the closed school that can accommodate the students from the closed school. To make this option more viable, we have changed ''high-achieving schools'' to ''higher-achieving schools.''

Changes: We have included the following clarifying language in the definition of *school closure:* ''School closure occurs when an LEA closes a school and enrolls the students who attended that school in other schools in the LEA that are higher achieving. These other schools should be within reasonable proximity to the closed school and may include, but are not limited to, charter schools or new schools for which achievement data are not yet available.''

Comment: A number of commenters expressed the opinion that a school should never be closed if that option displaces students and disrupts communities. The commenters noted the importance of having a neighborhood school that serves as the cornerstone of a community. One commenter noted that, when students are moved to a school in a new neighborhood, parents often find it more difficult to feel a sense of belonging at the school or ownership of their child's education. Another commenter noted that school closings often anger parents, exacerbate overcrowding, increase safety and security concerns in neighboring schools, and place students who need specific supports in schools that may not be able to provide those supports. One commenter expressed concern that closing a school may not address the educational needs of specific students, which may be masked within a higher-achieving school. Another commenter suggested the need for an ''educational impact statement'' before a school is closed, and one suggested that an LEA have a detailed plan demonstrating how support would be provided to students and their families transitioning to different schools. Several commenters suggested that the final requirements provide for parent and community input before a school is closed.

Discussion: The Department recognizes and understands that school closures, by definition, displace students and disrupt communities and are among the most difficult decisions

faced by local authorities. However, each of the four school intervention models is predicated on the potentially positive impact of ''disruptive change'' on student educational opportunities, achievement, and other related outcomes. Schools targeted for closure under this notice will likely have served their communities poorly for many years, if not decades, as measured by such factors as student achievement, graduation rates, and college enrollment rates. Moreover, such schools also will likely have proven impervious to positive change despite years of identification for improvement, corrective action, or restructuring under the ESEA as well as other previous reform efforts. The Department believes that, when such schools prove unwilling or unable to change, closure must be considered. Many communities have experience in closing, consolidating, or otherwise changing the structure of their existing schools and have their own processes and procedures for obtaining public input and approval for such changes, including assessment of the impact on students, families, neighborhoods, other schools, and transportation requirements, as well as for developing plans to facilitate smooth transitions for everyone involved. Although the Department encourages LEAs and SEAs to involve students, parents, educators, the community, and other stakeholders in the process, we decline to add any additional requirements in this area of appropriate local discretion.

To address the disruptiveness school closure may cause to a community, we have modified the definition of *school* closure, as noted in response to the prior comment, to clarify that closure should entail re-enrolling students from the closed school in other schools in the LEA that are within reasonable proximity to the closed school. Finally, we note that school closure is just one of the four school intervention models available under the terms of this notice. LEAs and communities that wish to preserve a neighborhood school may do so by implementing a turnaround, restart, or transformation model.

Changes: None.

Comment: Several commenters recommended that a school not be closed unless an LEA opens a new school in its place. One commenter specifically suggested closing a school in phases and reopening it as a new school. Under this concept, an LEA would permit both students and staff who choose to do so to remain in the school but the school would enroll no new students. At the same time, according to the commenter, other schools would be better prepared to absorb students who wish to transfer, logistical and facility issues would be minimized, and the new school would have adequate time to recruit and train high-quality staff and develop its instructional program.

Discussion: The Department has revised the language in the definition of *school closure* to recognize the need to have available options for accommodating the educational needs of the students in a closed school, but does not believe it is necessary to require an LEA to open a new school in place of the closed school. Many LEAs participating in the SIG program have under-utilized or under-enrolled schools that may readily accommodate students from a closed school; requiring such LEAs to open new schools simply does not make sense. However, an LEA that chooses to reopen a new school would be free to do so, either on its own or as part of a turnaround or restart model.

Changes: None.

Comment: One commenter suggested that the Department provide incentives for the development of successful charter schools in the areas in which schools are closed. Specifically, the commenter recommended that the Department require that an LEA that partners with a CMO in order to serve the area in which the LEA is closing schools receive a priority for SIG funds.

Discussion: SIG funds are intended to provide support to LEAs for school improvement efforts targeted primarily at the persistently lowest-achieving schools in a State, and not at providing incentives for the creation of new schools, charter or otherwise, that serve the same general attendance area. However, the restart model (as defined in this notice) may be used by LEAs in situations where the goal is to replace a persistently lowest-achieving school with a charter school.

Changes: None.

Comment: One commenter suggested that, in highlighting which schools may be available to enroll students from a closed school, the Department specifically mention magnet schools along with charter schools.

Discussion: Decisions about the schools to which students from closed schools may transfer are best left to the LEAs selecting the school closure option. The language in the definition of *school closure,* as in the SIG NPR, specifically mentions charter schools only because not all available charter schools might be operated by the LEA that is closing a neighborhood public school and, thus, might not be initially included in an LEA's plan for transferring students from the closed school. This is not a concern for magnet schools and, thus, the Department declines to make the requested change.

Changes: None.

Comment: One commenter recommended that the Department require that, before an LEA may enroll students from a closed school in another school, the LEA require a prospective receiving school, including a charter school, to demonstrate a record of effectiveness in educating its existing students and the capacity to integrate and educate new students from closed schools. The commenter emphasized the importance of this latter point, noting that merely because a school is high-achieving does not mean that it is equipped to help additional students from the lowest-achieving schools succeed while maintaining the quality of its current educational program.

Discussion: The Department believes that the requirement to enroll students from a closed school in a higher-achieving school responds to the concerns of this commenter. The Department believes that such higher-achieving schools are likely in nearly all circumstances, to provide a better education for any new students than was available in the closed school.

Changes: We have added language to the definition of *school closure* clarifying that school closure entails re-enrolling students from the closed school in other schools in the LEA that are higher achieving. We have also added clarifying language that such schools may be new schools for which achievement data are not available.

Comment: Several commenters questioned how SIG funds may be used in closing a school. One commenter noted the importance of gaining community input and that the costs for closing a school may include costs associated with conducting parent and community meetings. Another commenter recommended that allowable costs include academic supports for struggling students who are enrolled in new schools.

Discussion: LEAs may use SIG funds to pay reasonable and necessary costs related to closing a persistently lowest-achieving school, including the costs associated with parent and community outreach. However, SIG funds may not be used to serve students, struggling or otherwise, in the schools to which they transfer, unless those schools are Title I schools. The Department will include additional examples of permissible uses of SIG funds in closing a school in guidance accompanying the application package for SIG funds.

Changes: None.

Transformation Model

General Comments

Comment: Many commenters expressed strong support for the transformation model. One commenter, for example, described it as ''a balanced, comprehensive approach,'' and another described it as ''a supportive and constructive approach.'' Still another commenter stated that it ''provides the greatest hope for promoting genuine school improvement.'' Several commenters noted that the transformation model would be, in reality, the only choice among the four proposed interventions, especially for many rural school districts.

A few commenters responded that the transformation model would still not enable some communities, particularly those with difficult demographics, to make adequate yearly progress. Other commenters worried that, if not monitored carefully, the transformation model would become like the ''other'' restructuring option under section 1116(b)(8)(B)(v) of the ESEA, perceived as the easiest (but least meaningful) way to intervene in a struggling school. One of these commenters recommended adding strong language to make clear that the transformation model is not an incremental approach and that, except in the area of changing staff, the model is as rigorous as the turnaround model.

Discussion: We appreciate the commenters' support. We believe the transformation model holds tremendous promise for reforming persistently lowest-achieving schools by developing and increasing teacher and school leader effectiveness, implementing comprehensive instructional reform strategies, increasing learning time and creating community-oriented schools, and providing operating flexibility and sustained support. Assuming the activities that support these components are implemented with fidelity, the transformation model represents a rigorous and wholesale approach to reforming a struggling school, unlike the manner in which the ''other'' restructuring option in section 1116 of the ESEA has often been implemented.

Changes: To strengthen the transformation model, we have made a number of changes that we discuss in the following paragraphs in our responses to specific comments.

Comment: One commenter recommended affording greater flexibility to LEAs in implementing the transformation model by allowing them to choose which activities are ''required'' and which are ''permissible'' within the four components. The commenter noted that LEAs with persistently lowest-achieving schools may not have the teacher or leader capacity or system to support, monitor, and sustain reforms across all of their schools. The commenter advocated for creating systems at the district level that enable LEAs to provide support at each school.

Discussion: We decline to make the requested changes. We have carefully reviewed the required activities within the four components of the transformation model and have concluded that each is necessary to ensure the rigor and effectiveness of the model; therefore, we continue to require each one. An LEA, of course, may implement any or all of the permissible activities as well as other activities not described in this notice.

In anticipation of receiving unprecedented amounts of SIG funds, SEAs and LEAs should begin now to plan for how they can use those funds most effectively by putting in place the systems and conditions necessary to support reform in their persistently lowest-achieving schools. Despite the best preparation, however, we know that not every LEA with persistently lowest-achieving schools has the capacity to implement one of the four interventions in this notice in each such school. As indicated in the SIG NPR, therefore, an LEA that lacks the capacity to implement an intervention in each persistently lowest-achieving school may apply to the SEA to implement an intervention in just some of those schools.

Changes: None.

Comment: One commenter recommended adding ''graduation rates,'' rated equally with test scores, to assess student achievement in evaluating staff, ensuring that a school's curriculum is implemented with fidelity, and providing operating flexibility. The commenter also recommended making increasing graduation rates a required activity.

Discussion: We agree with the commenter that increasing high-school graduation rates is vital to improving student achievement, particularly in our Nation's ''dropout factories.'' We are, accordingly, adding increasing high school graduation rates in three provisions of the transformation model to make clear that it is also a goal of the interventions in this notice. We are also making a corresponding change in the turnaround model. In addition, we are defining ''persistently lowest-achieving schools'' to include high schools that have had a graduation rate below 60 percent over a number of years. Through these changes, we hope to identify high schools with low graduation rates that would implement one of the interventions in this notice.

Changes: We have added increasing high school graduation rates in three provisions of the transformation model: paragraphs (d)(1)(i)(B)(*1*); (d)(1)(i)(C); and (d)(4)(i)(A). We also made a corresponding change to the turnaround model in paragraph (a)(1)(i). In addition, we have included high schools that have had a graduation rate below 60 percent over a number of years in the definition of *persistently lowest-achieving schools.*

Comment: One commenter recommended that the Department require an LEA to set up an organizational entity within the LEA to be responsible and held accountable for rapid improvement in student achievement in schools implementing the transformation model in order to ''expedite the clearing of bureaucratic underbrush'' that can impede the model's effectiveness.

Discussion: Although nothing in this notice would preclude an LEA from establishing an organizational entity responsible for ensuring rapid improvement in student achievement in schools implementing the transformation model, we decline to require the establishment of such an entity. Evidence of an LEA's commitment to support its schools in carrying out the required elements of the transformation model is a factor that an SEA must consider in evaluating the LEA's application for SIG funds.

Changes: None.

Developing and Increasing Teacher and School Leader Effectiveness

Comment: A number of commenters supported the emphasis in the transformation model on strong principals and teachers, noting that they are critical to transforming a low-achieving school. Commenters cited specific provisions that they supported, such as ongoing, high-quality job-embedded professional development; strategies to recruit, place, and retain effective staff; increasing rigor through, for example, early-college high schools; extending learning time; emphasizing community-oriented schools; increased operating flexibility; and sustained support from the LEA and SEA.

Discussion: The Secretary appreciates the commenters' support.

Changes: None.

Comment: One commenter suggested adding the word ''ensuring'' in the heading of the component of the transformation model that requires developing teacher and school leader effectiveness. Another suggested changing the heading to ''providing

teachers and school leaders with the resources and tools needed to be effective.''

Discussion: We decline to make these changes. First, we do not believe that a school can *ensure* teacher and school leader effectiveness. We do believe, however, that a school can take steps to *improve* teacher and leader effectiveness. Second, we note that eligible schools in LEAs that receive SIG funds—all of which are among the lowest-achieving schools in a State—will have very large amounts of resources to implement the transformation model or one of the other school intervention models. Accordingly, we do not believe lack of resources will be a barrier for reforming the persistently lowest-achieving schools in a State. Moreover, there is a significant requirement that an LEA provide ongoing, high-quality, job-embedded professional development for all staff in a school implementing the transformation model. Principals, teachers, and school leaders, therefore, should have sufficient support to do their jobs.

Changes: We have revised the heading in paragraph (d)(1) to read: ''Developing and improving teacher and school leader effectiveness.''

Comment: Many commenters, many of whom were principals or represented principals, opposed the requirement to replace the principal. A number of commenters commented that such a decision should be made locally, based on local data and circumstances in individual schools, rather than being mandated by the Federal Government. One commenter, although acknowledging the importance of effective school leadership, asserted that a school's underperformance should not necessarily be blamed on the principal. The commenter cited other salient factors, such as whether the principal has the authority needed to turn a school around or whether the principal is laying a foundation for improvements not yet reflected in test scores. One commenter suggested that a principal not be removed until the principal's performance has been reviewed. Others suggested that, rather than replacing the principal immediately, the requirements permit an LEA to offer comprehensive support and leadership training for school leaders and other staff to assist them in making the significant changes needed to transform a school. Several commenters suggested removing the principal unless the person commits to and is held accountable for a turnaround plan that requires, for example, working with a partner management organization or other entity skilled in turning around struggling schools. Another commenter suggested permitting flexibility with respect to removing the principal in cases warranted by, for example, the size and geography of a school or LEA, the cause of the academic failure, the specific solutions being sought, or other barriers to removal.

Discussion: We refer readers to the earlier section of these comments and responses titled ''Principal and Staff Replacement'' in which we respond to similar public comments about the principal replacement requirement under the turnaround model.

Changes: None.

Comment: One commenter recommended a three-pronged approach to defining principal effectiveness: Evidence of improved student achievement; changes in the number and percentage of teachers rated as effective and highly effective; and assessment of a principal's highest priority actions and practices.

Discussion: Generally, the Department agrees that multiple measures, including the use of student achievement data, should be used to evaluate principal effectiveness. Accordingly, we have revised proposed section I.A.2.d.i.A.*1* in the SIG NPR (new paragraph (d)(1)(i)(B)(*1*) to allow an LEA to use, in addition to data on student growth, observation-based assessments and ongoing collections of professional practice that reflect student achievement and increased high-school graduation rates to evaluate principal effectiveness.

Changes: We have modified paragraph (d)(1)(i)(B)(*1*) regarding evaluation systems for teachers and principals to require that those systems take into account student growth data as a significant factor as well as other factors ''such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduation rates.''

Comment: Several commenters cited the shortage of principals, particularly in rural areas, as a reason to eliminate the requirement to remove the principal in a school using the transformation model. One commenter suggested hiring a ''turnaround leader'' or contracting with an external lead partner instead of replacing the principal.

Discussion: We refer readers to the earlier section of these comments and responses titled ''Principal and Staff Replacement'' where we respond to public comments about the principal replacement requirement under the turnaround model.

Changes: None.

Comment: A number of commenters suggested that a principal who has been recently hired to turn around a school should not be removed.

Discussion: The commenters might have overlooked the fact that proposed section I.B.1 in the SIG NPR allowed schools that have ''implemented, in whole or in part within the last two years, an intervention that meets the requirements of the turnaround, restart, or transformation models'' to ''continue or complete the intervention being implemented.'' Thus, a recently hired principal who was hired to implement a school intervention model that meets some or all of the elements of one of the interventions in this notice would not have to be replaced for purposes of a transformation model. We have retained this flexibility in this notice.

Changes: None.

Comment: Many commenters reacted to the requirement in the SIG NPR to use evaluations that are based in significant measure on student growth to improve teachers' and school leaders' performance. A few commenters supported the requirement; most opposed it for a number of reasons. Many commenters objected specifically to assessing teacher effectiveness using testing instruments not designed for that purpose. One commenter noted that standardized assessments are designed to measure students' ready retrieval of knowledge and do not accurately attribute student learning to particular lessons, pedagogical strategies, or individual teachers. In addition, the commenter noted that such assessments do not measure qualities like student motivation, intellectual readiness, persistence, creativity, or the ability to apply knowledge and work productively with others. One commenter asserted that State assessments are generally of low quality and measure a narrow range of student learning. The commenter also noted that assessments do not acknowledge the contributions (or lack thereof) of others, such as prior teachers, towards student achievement. Two commenters argued that State assessments do not provide information about the conditions in which learning occurs and over which a teacher has no control, such as class size, student demographics, or instructional resources. One commenter asserted that State assessments fail to capture academic growth with respect to students with disabilities. A number of commenters proposed other academic and nonacademic measures for evaluating teachers and school leaders, such as standards-based evaluations of practice that include such criteria as

observations of lesson preparation, content, and delivery; innovation in teaching practices; analyses of student work and other measures of student learning, such as writing samples, grades, goals in individualized education programs for students with disabilities, and ''capstone'' projects such as end-of-course research papers; assessment of commitment and ability to use feedback and data to learn and improve practices; one-on-one teaching; staff leadership and mentoring skills; conflict resolution skills; crisis management experience; extra-curricular roles and contributions to a school; and relationships with parents and the community.

Discussion: We respect and agree with the commenters' concerns that student achievement data alone should not be used as the sole means to evaluate teachers and principals. We must develop and support better measures that take into account student achievement and more accurately measure teacher and principal performance. Accordingly, we have revised the transformation model's evaluation systems provision to require that these systems take into account student growth data as a significant factor, but also include other factors ''such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduation rates.'' We have also clarified that those systems must be rigorous, transparent, and equitable and that they must be designed and developed with teacher and principal involvement.

Nonetheless, it is important to note that the Secretary believes that student achievement data must be included as a significant factor in evaluations of teacher and principal effectiveness. We are confident that the legitimate concerns of the commenters regarding use of student data can be addressed.

Changes: We have modified paragraph (d)(1)(i)(B) regarding evaluation systems for teachers and principals in several respects. First, we modified paragraph (d)(1)(i)(B) to require that evaluation systems be rigorous, transparent, and equitable. Second, we modified paragraph (d)(1)(i)(B)(*1*) to require that those systems take into account student growth data as a significant factor but also include other factors ''such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high school graduation rates.'' Third, we added paragraph (d)(1)(i)(B)(*2*) to require that evaluation systems be designed and developed with teacher and principal involvement.

Comment: A number of commenters raised issues related to collective bargaining and the transformation model. Several commenters objected to the perceived requirement to establish a performance pay plan based on student outcomes, noting that collective bargaining agreements and, in some cases, State laws often prohibit such a plan. Two others noted that, because union contracts limit a principal's control over staffing, principals should not be held accountable for school performance results. At least one commenter expressed concern that these collective bargaining barriers could preclude implementation of the transformation model.

Discussion: In general, we refer readers to the earlier section of these comments and responses titled ''Principal and Staff Replacement'' where we respond to similar public comments regarding collective bargaining as it relates to the turnaround model. In addition, we note that the transformation model does not require that an LEA establish a performance pay plan for teachers or principals. Rather, an LEA must identify and reward school leaders, teachers, and other staff who, in implementing the transformation model, have increased student achievement and graduation rates. One way of meeting this requirement would be through performance pay. An LEA has the flexibility to devise other means that meet this requirement.

Changes: None.

Comment: One commenter, responding to the proposed requirement to remove staff who fail to contribute to raising student achievement, recommended that this provision be deleted. The commenter noted that this provision would make it very difficult to attract the most highly qualified teachers and principals to the persistently lowest-achieving schools. The commenter suggested that extensive professional development, rather than removal, be required for staff in schools in which achievement does not improve.

Discussion: In general, we refer readers to the section of these comments and responses titled ''Principal and Staff Replacement'' where we respond to similar comments regarding removal of the staff replacement requirement under the turnaround model.

Changes: We have modified paragraph (d)(1)(i)(C) regarding removing staff who, in implementing a transformation model, have not contributed to increased student achievement and high school graduation rates to make clear that removal should only occur after an individual has had multiple opportunities to improve his or her professional practice and has still not contributed to increased student achievement and increased high school graduation rates.

Comment: Several commenters objected to the Secretary's proposal to require an LEA to make ''high-stakes'' tenure and compensation decisions through which the LEA would ''identify and reward school leaders, teachers, and other staff who improve student achievement outcomes and identify and remove those who do not.'' The commenters thought this standard was too imprecise. They noted that teacher compensation, tenure, and dismissal are, for the most part, governed by State laws and/or collective bargaining agreements that cannot be simply overturned by a Federal grant program. One of the commenters suggested that this provision be modified by adding, at the end, the phrase ''in full accordance with local and State laws, including collective bargaining agreements.''

Discussion: In general, we refer readers to the section of these comments and responses titled ''Principal and Staff Replacement'' where we respond to similar comments regarding collective bargaining issues as they relate to the turnaround model. In addition, we note that no LEA is required to apply for a School Improvement Grant. Those that do will receive significant resources to support their efforts to reform their most struggling schools, but they also must have the ability to implement the required components of whichever intervention they choose. Accordingly, we decline to make the recommended changes.

Changes: None.

Comment: A number of commenters provided additional examples of what professional development of staff under the transformation model should entail, such as: Addressing the needs of students with disabilities and limited English proficient students; creating professional learning communities within a school; providing mentoring; involving parents in their child's education, especially parents of limited English proficient students and immigrant children; understanding and using data and assessments to improve and personalize classroom practice; and implementing adolescent literacy and mathematics initiatives.

Discussion: We appreciate the many excellent suggestions for additional areas on which professional development should focus. With one exception, we decline to add examples.

We could never list all relevant topics for strong professional development, which must be tailored to the needs of staff in particular schools, and we would not want to suggest that topics not listed were, thus, less worthy of addressing.

Changes: We have added a permissible activity in paragraph (d)(2)(ii)(C) under ''comprehensive instructional reform strategies'' to highlight the need for additional supports and professional development for teachers and principals in implementing effective strategies to educate students with disabilities in the least restrictive environment and to ensure that limited English proficient students acquire language skills necessary to master academic content.

Comment: One commenter noted that the requirement to provide staff with ongoing, high-quality, job-embedded professional development was silent with respect to the impact of professional development on instruction. The commenter pointed to an apparent inconsistency with the emphasis in the permissible activity that suggested that LEAs be required to institute a system for measuring changes in instructional practices resulting from professional development. Because the commenter values professional development designed to improve instruction, the commenter recommended that the Secretary require a school to have a system for measuring changes in instructional practices resulting from professional development in order to evaluate its efficacy.

Discussion: We believe that the requirement to provide ongoing, high-quality, job-embedded professional development to staff in a school is clearly tied to improving instruction in multiple ways. First, the requirement that professional development be ''job-embedded'' connotes a direct connection between a teacher's work in the classroom and the professional development the teacher receives. Second, the examples of topics for professional development, such as subject-specific pedagogy and differentiated instruction, are directly related to improving the instruction a teacher provides. Third, professional development must be aligned with the school's comprehensive instructional program. Finally, the articulated purpose of professional development in paragraph (d)(1)(i)(D) of the transformation model is to ensure that a teacher is ''equipped to facilitate effective teaching and learning'' and has the ''capacity to successfully implement school reform strategies.'' Although we believe that instituting a system for measuring changes in instructional practices resulting from professional development can be valuable, we decline to require it as part of this program. We believe that the specificity in the nature of the professional development required for a transformation model is sufficient to ensure that it, in fact, results in improved instruction.

Changes: None.

Comment: One commenter recommended that the Department add a requirement that professional development be designed to ensure that staff of a school using the transformation model can work effectively with families and community partners. The commenter reasoned that, given the emphasis on working with families and community partners to improve the academic achievement of students in a school, staff must know how to work with them.

Discussion: We decline to make the suggested change. We agree with the commenter that family and community involvement in a school is critical to the school's ultimate success and have included, as both required and permissible activities, a variety of provisions to address this important need. We would expect professional development to include appropriate training to ensure, as the commenter suggests, that staff are well equipped to facilitate family and community involvement. We do not believe, however, that we should try to expressly highlight each and every appropriate topic of high-quality professional development in this notice.

Changes: None.

Comment: One commenter suggested that financial incentives are not necessarily the most motivating factor in retaining high-quality staff. Rather, the commenter stated that the culture of a school—*i.e.,* quality relationships with other teachers, the school climate, the leadership of the principal, and the potential for professional growth—is often a greater motivator.

Discussion: We agree that financial incentives are not the only motivating factor in attracting staff to a school or retaining them in the school. We hope that changes in the culture of a school that result from implementing the interventions established in this notice play a large role in attracting, placing, and retaining high-quality staff. As a result, in both the transformation and turnaround models, we have provided examples of several strategies to recruit, place, and retain high-quality staff.

Changes: We have added examples of strategies designed to recruit, place, and retain staff, including ''financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions'' in paragraphs (d)(1)(i)(E), with respect to the transformation model, and (a)(1)(iii), with respect to the turnaround model. We have also made clear that those strategies must be designed to recruit, place, and retain staff who have the skills necessary to meet the needs of the students in the schools implementing a transformation or turnaround model, respectively.

Comment: Several commenters supported the concept of ''mutual consent''—that is, ensuring that a school is not required to accept a teacher without the mutual consent of the teacher and the principal, regardless of the teacher's seniority. One commenter recommended making ''mutual consent'' a required component of both the turnaround model and the transformation model. Other commenters, however, opposed any mention of ''mutual consent,'' even as a permissible activity. One asserted that the concept conflicts with the provision in section 1116(d) of the ESEA that precludes interventions in Title I schools from affecting the rights, remedies, and procedures afforded school employees under Federal, State, or local laws or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between employees and their employers.

Discussion: Like several commenters, the Secretary supports and encourages the use of mutual consent. The Secretary considers mutual consent to be a positive example of LEAs' partnering with unions to bring change to the Nation's persistently lowest-achieving schools. That said, we decline to require mutual consent as a part of the transformation model because mutual consent policies and other similar agreements are best resolved at the State and local levels in the context of existing collective bargaining agreements.

Changes: None.

Comment: One commenter recommended that the Secretary add a requirement that, in the event budget cuts occur, a principal be allowed to lay off teachers on the basis of performance rather than seniority. The commenter noted that this provision could be an important lever for obtaining positive changes to collective bargaining agreements that would help low-achieving schools attract and retain effective staff.

Discussion: We decline to make the suggested change. Although we support the need to modify collective bargaining

agreements if they impede efforts to attract and retain qualified staff in the persistently lowest-achieving schools, we do not believe we can or should prescribe the specific terms of those agreements.

Changes: None.

Comprehensive Instructional Reform Strategies

Comment: Several commenters suggested that the Department revise the comprehensive instructional reform component of the transformation model by modifying or expanding the provision requiring the use of individualized student data to inform and differentiate instruction. One commenter suggested clarifying that individualized student data are to be used to meet students' academic needs while another commenter suggested clarifying that the data should be used to address the needs of ''individual'' students. Other commenters suggested expanding this provision to include non-academic data such as chronic absenteeism, truancy, health (vision, hearing, dental, and access to primary care), safety, family engagement and well-being, and housing. The commenter suggested that these data be used, in partnership with parents and other community partners, to address other student needs.

Discussion: The purpose of this section of the transformation model is to improve instruction, and we agree that adding the word ''academic'' is a helpful clarification. Although we also agree that non-academic data can play an important role in identifying other student needs that can affect learning, local school administrators, working with parents and community partners, are in the best position to determine how to address those needs. Therefore, we decline to add a requirement that a school examine non-academic data.

Changes: We have added the word ''academic'' in paragraph (d)(2)(i)(B) to clarify that the continuous use of student data to inform and differentiate instruction must be promoted to meet the academic needs of individual students. We made a corresponding change in paragraph (a)(1)(vii) regarding the turnaround model.

Comment: One commenter noted that requiring instructional programs to be ''evidence-based'' instead of ''research-based'' would enable the use of programs for which there is accumulated evidence that does not meet the current ESEA definition of ''scientifically based research.''

Discussion: We agree with the commenter that an LEA should only implement instructional programs for which there is a sufficient body of evidence supporting improved student achievement. We do not believe a change is necessary, however, because we do not use the term ''scientifically based research'' and, therefore, do not invoke the stringent requirements in section 9101(37) of the ESEA.

Changes: None.

Comment: One commenter recommended that the Department add a provision that would require a school to identify ''off-track and out-of-school youth, through analysis and segmentation of student data,'' and develop and implement education options to put them back on track to graduate. The commenter stated that, once students are off track to graduating on time, their likelihood of graduating is often as low as 20 percent. Moreover, in the 2,000 high schools in the Nation with four-year graduation rates of 60 percent or less, up to 80 percent of ninth graders are significantly behind in skills or credits. Several other commenters suggested including stronger support for re-enrolling youth who have left high school as a critical part of increasing graduation rates.

Discussion: We agree that programs and strategies designed to re-engage youth who have dropped out of high school without receiving a diploma are necessary in increasing graduation rates. Accordingly, we are modifying the notice to address this need. We also hope that an LEA's extension or restructuring of the school day to add time for strategies such as advisory periods to build relationships between students, faculty, and other staff will help to identify students who are struggling and to secure for them the necessary supports sufficiently early to prevent their dropping out of school. Finally, as noted earlier, we have added references to increased high school graduation rates in four provisions to make clear that implementation of the models in high schools must focus on increasing graduation rates as well as improved student achievement.

Changes: We have modified paragraph (d)(2)(ii)(E)(*3*) to add re-engagement strategies as an example of a way to increase high school graduation rates. We have also added paragraph (d)(2)(ii)(E)(*4*) suggesting that permissible comprehensive instructional reform strategies may include establishing early-warning systems to identify students who may be at risk of failing to achieve to high standards or graduate.

Comment: A number of commenters suggested that the Department include additional required or permissible activities for carrying out comprehensive instructional reform strategies. Specifically, two commenters recommended that the Department require schools to conduct periodic reviews so as to ensure that the curriculum is being implemented with fidelity (rather than merely permitting this activity) and improve school library programs. Other commenters suggested expanding the permissible activities in secondary schools to include learning opportunities that reflect the context of the community in which the school is located, such as service learning, place-based education, and civic and environmental education. The commenters also recommended clarifying that improving students' transition from middle to high schools should include family outreach and parent education. Another commenter suggested that the Department expand the list of permissible activities in elementary schools to include providing opportunities for students to attend foreign language immersion programs.

Discussion: The Secretary agrees that there are any number of important activities that would be appropriate to address in a transformation model. As described in this notice, the transformation model, by necessity, focuses on several broad strategies. However, nothing precludes local school leaders from expanding the model as necessary to address other factors needed to respond to the specific needs of students in the school.

Changes: We have included in this notice a definition of *increased learning time* that would permit many, if not all, of the commenters' suggestions. For example, that definition makes clear that a school may increase time to teach core academic subjects, including, for example, civics and foreign languages, and to provide enrichment activities such as service learning and experiential and work-based learning opportunities.

Comment: One commenter recommended that the Department add the implementation of technology-based solutions to the list of permissible activities, while another commenter recommended that the Department add online instructional services offered by a for-profit or non-profit entity as an example of a comprehensive, research-based instructional program.

Discussion: The Secretary agrees that technology can be an important tool for supporting instruction, and we are adding as a permissible activity the suggestion to use and integrate technology-based supports and interventions as part of a school's instructional program. Although online instructional programs might be part of

a school's system of technology-based supports, we decline to mention it specifically. Online instructional programs, if research-based, are one of many ways to meet the needs of students in struggling schools, particularly to provide courses or programs that schools in rural or remote areas cannot otherwise provide. We cannot mention in this notice, however, each and every type of instructional program.

Changes: We have added as a permissible activity in paragraph (d)(2)(ii)(D) using and integrating technology-based supports and interventions as part of a school's instructional program.

Comment: One commenter recommended that the Department add to the transformation model the strategy to reorganize the school with a new purpose and structure it as a magnet school, a thematic school, or a school-community partnership.

Discussion: We decline to include this change in the transformation model, a model that uses the existing staff in a school and who would likely not have the expertise to implement an instructional program with a whole new purpose.

Changes: None. However, we have clarified in paragraph (a)(2)(ii) that a turnaround model may include a new school model (*e.g.*, themed, dual language academy).

Increasing Learning Time and Creating Community-Oriented Schools

Comment: Several commenters expressed support overall and for various activities of the ''Increasing learning time and creating community-oriented schools'' component of the transformation model, including the references to school climate, internships, and community service.

Discussion: We appreciate the commenters' support. We are including some of these activities in the definition of *increased learning time* that also applies to the Stabilization Phase II and Race to the Top programs, rather than listing them as specific elements of the ''increasing learning time and creating community-oriented schools'' component. They have no less importance, however.

Changes: We have included in the notice a definition of *increased learning time* that includes opportunities for enrichment activities for students, such as service learning and community service.

Comment: Several commenters suggested that the Department highlight the importance of certain activities by revising the heading of this component. For example, one commenter suggesting revising the heading to emphasize family involvement while another commenter suggested revising it to specifically reference students' social and emotional needs. A third commenter suggested expanding the title to include ''using research-based methods to deliver comprehensive services to students.''

Discussion: We decline to make these changes. Although we embrace the need to address not just the academic needs of students but also how their social and emotional needs affect their learning and to emphasize the importance of family involvement, we believe it is preferable to keep the heading for this component more general. The headings for each of the components in the transformation model are deliberately broad so as to cover a number of important activities, and the fact that a specific activity is not in a heading is not a reflection of that activity's importance. We believe the list of permissible activities illustrates various ways in which a school can address students' social and emotional needs and involve families in their child's education.

Changes: None.

Comment: Several commenters suggested that the Department highlight the importance of certain activities by making them required. For example, some commenters recommended expanding the required activities to include a comprehensive guidance curriculum delivered by a school counselor who is certified by the State department of education; partnering with parents, faith-based and community-based organizations, and others to provide comprehensive student services; more time for social and emotional learning; and improving school climate. Another commenter recommended requiring that the transformation model include the components of the Comprehensive School Reform Demonstration program.

Other commenters suggested adding references to high school study-abroad programs as an example of a student enrichment activity and activities designed to reduce out-of-school suspensions and expulsions as a strategy for addressing school climate.

Discussion: As we noted earlier, we agree that there are any number of important activities that would be appropriate to address in a transformation model. As described in this notice, the transformation model, by necessity, focuses on several broad strategies. However, there is nothing to prevent local school leaders from expanding the model as necessary to address other factors needed to respond to the specific needs of students in the school.

Changes: None.

Comment: One commenter suggested that the Department define ''community-oriented schools'' as schools that partner with community-based organizations to provide necessary services to students and families using research-based methods, which might include: a school-based, on-site coordinator; comprehensive school- and student-level needs assessments; community-assets assessments and identification of potential partners; annual plans for school-level prevention and individual intervention strategies; delivery of an appropriate mix of prevention and intervention services; data collection and evaluation over time, with on-going modifications of services; and/or other research-based components. Another commenter suggested removing the word ''oriented'' and using the term ''community-schools,'' which the commenter indicated is more commonly known.

Discussion: Although we appreciate the commenters' interest in ensuring greater clarity on the concept of ''community-oriented schools,'' we decline to make the suggested changes. The components of ''community-oriented schools'' will vary school by school depending on student and community needs and resources. There is nothing in the notice that would prevent local school leaders from undertaking any of the strategies in the definition the commenters proposed if necessary to respond to the specific needs of students in the school.

Changes: None.

Comment: Some commenters suggested that the Department add ''community-based organization'' and ''workforce systems, specifically nonprofit and community-based organizations providing employment, training, and education services to youth'' to the list of entities with which an LEA or school may choose to partner in providing enrichment activities during extended learning time.

Discussion: In the SIG NPR, we listed universities, businesses, and museums as examples of entities with which a school could partner in providing enrichment activities during extended learning time. In this final notice, we are instead including a definition of *increased learning time* that applies to the Stabilization Phase II, Race to the Top, and SIG programs. That definition no longer includes examples of appropriate partnership entities, because there may be any number of

organizations or entities in a particular community that might be appropriate partners.

Changes: In the definition of *increased learning time*, we have included the following: ''(b) Instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations;''.

Comment: One commenter suggested that the reference to ''parents,'' in the list of entities with which schools might partner to create safe school environments that meet students' social, emotional, and health needs, should include ''parent organizations.''

Discussion: We agree with this suggestion and are adding a reference to parent organizations.

Changes: We have revised the permissible activity in paragraph (d)(3)(ii)(A) regarding creating safe school environments to include a reference to partnering with parents and ''parent organizations,'' along with faith- and community-based organizations, health clinics, other State and local agencies, and others.

Comment: One commenter recommended that the Department define ''family engagement'' and requiring the use of certain family-engagement mechanisms, including family-engagement coordinators at school sites, home visitation programs, family literacy programs, and parent leadership programs. Another commenter recommended defining ''community engagement'' as systemic efforts to involve parents, community residents, members of school communities, community partners, and other stakeholders in exploring student and school needs and, working together, developing a plan to address those needs.

Discussion: We agree that there are any number of important activities that could support increased family and community engagement. The reference to family and community engagement in this notice is deliberately broad so as to provide maximum flexibility in determining how best to address local needs. However, there is nothing to prevent local school leaders from incorporating any of the strategies mentioned or other strategies that will lead to effective family and community engagement.

Changes: None.

Comment: One commenter recommended that the Department include language to make clear that extending learning time can be accomplished by adding a preschool program prior to school entry.

Discussion: The Secretary agrees that preschool education is very important in ensuring that children enter kindergarten with the skills necessary to succeed in school. He also agrees that preschool education is an effective way to increase learning time.

Changes: We have added, as a permissible activity in paragraph (d)(3)(ii)(D), expanding the school program to offer full-day kindergarten or pre-kindergarten.

Comment: Several commenters suggested that the Department clarify that increased learning time includes summer school, after-school programs, and other instruction during non-school hours. Several other commenters suggested increasing instructional time during the school day and the need to make existing time more effective, including through the use of technology. Another commenter suggested clarifying that extended learning time should be beyond the current State-mandated instructional time.

Discussion: We have added in this notice a definition of *increased learning time* that applies to the Stabilization Phase II, Race to the Top, and SIG programs. Under that definition, *increased learning time* means using a longer school day, week, or year schedule to significantly increase the total number of school hours to include additional time for instruction in core academic subjects; time for instruction in other subjects and enrichment activities that contribute to a well-rounded education; and time for teachers to collaborate, plan, and engage in professional development within and across grades and subjects.

Changes: We have revised the notice to define *increased learning time.* The full definition is as follows:

Increased learning time means using a longer school day, week, or year schedule to significantly increase the total number of school hours to include additional time for (a) instruction in core academic subjects including English; reading or language arts; mathematics; science; foreign languages; civics and government; economics; arts; history; and geography; (b) instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations; and (c) teachers to collaborate, plan, and engage in professional development within and across grades and subjects.[4]

Providing Operating Flexibility and Sustained Support

Comment: One commenter suggested that the Department add a requirement that a school implementing the transformation model be required to present a plan for how the various elements of the model are aligned and coordinated to improve student achievement and other indicators of student growth (such as health and civic competencies).

Discussion: We decline to make the suggested change. We are confident that a school implementing the transformation model would have a plan without the need for the Department to require it.

Changes: None.

Comment: One commenter recommended that the list of potential technical assistance providers in proposed section I.A.d.iv.A.2 of the SIG NPR be expanded to include ''professional organizations that have a track record of turning around low-performing schools.''

Discussion: This provision is intended to ensure that schools implementing the transformation model receive coordinated ongoing technical assistance and reflects the belief that an SEA, LEA, or external lead partner organization would be in the best position to integrate services at the school level. This notice does not preclude the involvement of entities other than those mentioned so long as they fulfill the role of a lead partner in integrating services and supports for the school.

Changes: None.

Comment: One commenter cautioned about the use of ''weighted per-pupil school-based budgeting,'' noting that early research indicates this practice

[4] Research supports the effectiveness of well-designed programs that expand learning time by a minimum of 300 hours per school year. (See Frazier, Julie A.; Morrison, Frederick J. ''The Influence of Extended-year Schooling on Growth of Achievement and Perceived Competence in Early Elementary School.'' Child Development. Vol. 69 (2), April 1998, pp. 495–497 and research done by Mass2020.) Extending learning into before- and after-school hours can be difficult to implement effectively, but is permissible under this definition with encouragement to closely integrate and coordinate academic work between in-school and out-of school. (See James-Burdumy, Susanne; Dynarski, Mark; Deke, John. ''When Elementary Schools Stay Open Late: Results from The National Evaluation of the 21st Century Community Learning Centers Program.'' *http://www.mathematica-mpr.com/publications/redirect_PubsDB.asp?strSite=http://epa.sagepub.com/cgi/content/abstract/29/4/296.* Educational Evaluation and Policy Analysis, Vol. 29 (4), December 2007, Document No. PP07–121.)

undermines cross-school cooperation by promoting competition among schools for students and the resources or liabilities they may represent.

Discussion: We note that implementing a per-pupil school-based budget formula that is weighted based on student needs is listed as a permissible, not required, activity to give schools operational flexibility. We believe allocating funds based on student characteristics and then giving schools broad flexibility to use those funds to meet their respective needs is one way to provide incentives for schools to use their cumulative resources in innovative ways to meet the needs of their student population. If an LEA determines such budgeting is not appropriate in the context of its schools, it need not implement this activity.

Changes: None.

Analysis of Comments and Changes Made in These Final Requirements

LEA Requirements

Comment: One commenter recommended that the final notice require an LEA to conduct an ''inventory of campus learning'' before selecting a school intervention model. Another commenter recommended that the SEA should be required to consider the research base for a proposed intervention.

Discussion: As a clarification, the requirement for an LEA to analyze the needs of its schools and select an appropriate intervention, which in the NPR was referenced at the end of proposed section I.A.2 regarding strength of an LEA's commitment and indirectly referenced in proposed section II.B.2 under SEA Responsibilities, now is specifically required in new section I.A.4 regarding evidence of strongest commitment and new section II.A.2(a)(iv) (proposed II.A.2) of the LEA Requirements section of this notice. We believe this requirement addresses the commenter's recommendation that an LEA conduct an ''inventory of campus learning'' before selecting a model. We do not agree, however, that such analysis needs to include consideration, by either the SEA or the LEA, of the research base behind the four school intervention models, primarily because the Department already has taken into account available research in developing these models.

Changes: The Department has added a requirement in new section II.A.2(a)(iv) (proposed II.A.2) that an LEA ''[p]rovide evidence of its strong commitment to use school improvement funds to implement the four interventions by addressing the factors in section I.A.4(a) of these requirements.'' New section I.A.4(a)(i) states that one of the factors is the LEA's efforts to ''[a]nalyze the needs of its schools and select an intervention for each school.''

Comment: One commenter noted that, although the proposed SEA review of LEA applications included a review of how an LEA proposes to recruit, screen, and select external providers to ensure quality and whether school interventions are embedded in a longer-term plan to sustain gains in student achievement, there were no LEA application requirements in the NPR that addressed these issues.

Discussion: The Department is adding language in new section II.A.2(a)(iv) (proposed II.A.2) of the final requirements that requires an LEA in its application for school improvement funds to provide evidence of its strong commitment to use school improvement funds to implement the four school intervention models by addressing the factors in new section I.A.4(a), which include recruiting, screening, and selecting external providers and sustaining the reforms after the funding period ends. However, we are removing the language in proposed section I.A.2(4) requiring LEA efforts to ''embed the interventions in a longer-term plan to sustain gains in achievement'' due to redundancy with the requirement in new section I.A.4(a)(vi) regarding how the LEA will ''[s]ustain the reforms after the funding period ends.'' We also are eliminating proposed section II.A.8 and a portion of proposed section II.B.2(2) for the same reason.

Changes: New section II.A.2(a)(iv) requires an LEA in its application for school improvement funds to ''[p]rovide evidence of its strong commitment to use school improvement funds to implement the four interventions by addressing the factors in section I.A.4(a) of these requirements.'' (These factors were moved from proposed section II.B.2(2), SEA Responsibilities, in the NPR.) We have removed from these factors the proposed requirement in section I.A.2(4) that an LEA ''embed the interventions in a longer-term plan to sustain gains in achievement,'' and have removed proposed section II.A.8 from these final requirements.

Comment: Many commenters objected to the requirement in proposed section II.A.2 that an LEA with nine or more Tier I and Tier II schools not implement the same intervention in more than 50 percent of these schools. These commenters variously observed that this restriction conflicted with the emphasis on using data to match interventions to local needs, the desirability of scaling up successful interventions, and limited LEA capacity for administering multiple intervention strategies. Other commenters objected that there was no research base for restricting the application of particular interventions. Most commenters recommended eliminating the proposed restriction, but some suggested modifying it to permit exceptions if an LEA can provide data or research to support expanded use of a particular intervention.

Discussion: After years of school improvement efforts under the ESEA, there are far too few examples of persistently low-achieving schools that have significantly and rapidly improved performance. We believe that, in part, this is because turning around such schools generally requires fundamental changes in leadership and often in governance and staff, changes that many LEAs are reluctant to make. Consequently, removing proposed section II.A.2 could inhibit implementation of models that involve significant changes in governance, leadership, and staffing in the persistently lowest-achieving schools. In particular, the Department is concerned that many LEAs would overuse the transformation model, even in cases where a comprehensive needs analysis supports more far-reaching changes in leadership and staffing. For this reason, we are retaining proposed section II.A.2 in the final requirements, but modifying it to state that an LEA with nine or more Tier I and Tier II schools may not implement the transformation model in more than 50 percent of those schools.

Changes: We have replaced ''same intervention'' with ''transformation model'' in new section II.A.2(b) in these final requirements.

Comment: Two commenters recommended requiring LEAs to implement one of the four school intervention models in their Tier II schools, as well as in their Tier I schools, unless they can demonstrate that they lack ''sufficient capacity to undertake intensive interventions'' in such schools.

Discussion: The Department agrees that serving Tier II schools is a critical part of the School Improvement Grants program described in this final notice; this is why, for example, an SEA is required to give priority to funding LEAs that commit to serve both Tier I and Tier II schools. However, because the ESEA authorizes an LEA to use school improvement funds only in Title I schools in improvement, corrective action, or restructuring, and because an SEA must apply for a waiver to permit

its LEAs to serve Tier II schools, we decline to require LEAs to serve their Tier II schools.

Changes: None.

Comment: One commenter asked for clarification regarding the allowable interventions for Tier III schools.

Discussion: An LEA has significant flexibility with respect to the school improvement activities it conducts in Tier III schools. It can certainly implement the four school intervention models in this notice if the needs of Tier III schools warrant those interventions. It can also implement the interventions required or permitted under section 1116 of the ESEA, which outlines the school improvement process for Title I schools identified for improvement, corrective action, or restructuring.

Changes: None.

Comment: One commenter requested additional information on how schools with kindergarten through grade 12, kindergarten through grade 8, and grades 6 through 12 will be classified under the three tiers.

Discussion: Grade spans are not a factor in an SEA's identification of Tier I and Tier III schools. In determining which schools may be considered Tier II schools, the ''frequently asked questions'' (FAQs) guidance document for the final State Fiscal Stabilization Fund Phase II notice states that, in accordance with section 9101(38) of the ESEA, a secondary school is a school that provides ''secondary education, as determined under State law, except that the term does not include any education beyond grade 12.'' Thus, depending on State law, a school with any of the grade spans described by the commenter (K–12, K–8, 6–12) that is a persistently lowest-achieving school and is eligible for, but does not receive, Title I, Part A funds may be considered a secondary school that could be identified by an SEA as a Tier II school.

Changes: None.

Comment: One commenter recommended that the Department require an LEA to include in its application a description of how the LEA will engage parents and families under each school intervention model that it plans to implement, and require an SEA to ensure that an LEA's application includes family engagement and parent outreach activities consistent with the requirements of section 1116 of the ESEA. Other commenters recommended that parents, communities, and other affected parties have an opportunity to comment before a specific model is selected for implementation, and that community support for a model be considered part of the ''greatest commitment'' required to receive School Improvement Grants funding. Two other commenters called for Tier I and Tier II schools to provide information to parents and the public about their school intervention model before it is implemented, with a clear explanation of the school's achievement record, why the model is being implemented, and regular progress updates.

Discussion: The Department agrees that parent, family, and community involvement can make an important contribution to turning around a persistently lowest-achieving school. This is why this final notice retains the requirement in proposed section I.A.2(d)(iii)(A)(*4*) that a transformation model provide ongoing mechanisms for family and community engagement. In addition, partnering with parents and faith- and community-based organizations to create safe school environments that meet students' social, emotional, and health needs is a permissible activity under the turnaround, restart, and transformation models. The Department also anticipates and expects that, consistent with existing school improvement requirements in section 1116 of the ESEA, LEAs and schools will keep parents informed regarding planned interventions and progress updates on the implementation of such interventions. We believe that these pre-existing requirements are sufficient to ensure parent and community engagement and, therefore, decline to add specific requirements for demonstrated parental or community support for the intervention models selected by an LEA.

Changes: We have added a provision in new section I.A.2(a)(2)(i) regarding the turnaround model and provided guidance to clarify under the restart model that family and community engagement activities are permitted. They are required under the transformation model in new section I.A.2(d)(3)(i)(B) (proposed I.A.2(d)(iii)(A)(*4*)).

Comment: One commenter recommended requiring LEAs to engage the local collective bargaining representative prior to participating in the School Improvement Grants process and to include in their applications such evidence of that engagement as a written commitment of support or a memorandum of understanding demonstrating the commitment of their teachers and staff to collaborate on the implementation of school intervention models.

Discussion: As discussed elsewhere in this notice, the Department encourages LEAs and teacher unions and teacher membership associations to collaborate closely in the development of LEA school intervention plans and to agree on strategies to effectively implement school intervention models in the context of existing collective bargaining agreements. However, we decline to require evidence of such collaboration in LEA applications for School Improvement Grants funding.

Changes: None.

Comment: One commenter recommended adding provisions to the final requirements that would make it easier for rural LEAs with low-achieving schools to participate by allowing educational service agencies to apply on behalf of several LEAs, allowing LEAs to apply in consortia, and requiring SEAs to provide technical assistance to rural LEAs.

Discussion: Section 1003(g) of the ESEA, which authorizes the School Improvement Grants program, requires SEAs to subgrant 95 percent of program funds directly to LEAs with schools identified for improvement, corrective action, or restructuring. If an educational service agency is an LEA within the definition in section 9101(26) of the ESEA, it may apply for a School Improvement Grant on behalf of a number of LEAs, provided the educational service agency has the authority and capability to implement the rigorous whole-school intervention models required by this notice. Additionally, LEAs may apply as a consortium for a School Improvement Grant but the consortia must be able to implement the required interventions in the Tier I and Tier II schools the consortia commits to serve. Moreover, pursuant to section 1003(g)(7) of the ESEA, if an SEA receives approval from an LEA, the SEA may directly provide support for school improvement, or arrange for the provision of such support ''through other entities such as school support teams or educational service agencies.'' Accordingly, a rural LEA, either individually or in consortia with other rural LEAs, may arrange to implement school intervention models in its Tier I and Tier II schools, or to provide school improvement services to its Tier III schools, through partnership with an educational service agency or similar entity. In addition, each SEA must address in its application for a School Improvement Grant how the SEA will use its five-percent share of those funds, which may include providing technical assistance to participating rural LEAs and schools.

Changes: Section II.D requires an SEA to describe in its application for a School Improvement Grant how the

SEA will use the school improvement funds it reserves at the State level.

Comment: One commenter recommended that, regardless of the school intervention model selected for a Tier I or Tier II school, LEAs be required to address other teaching and learning conditions that attract high-quality teachers to struggling schools, including the following: (1) The quality of the school building and classrooms; (2) class size; (3) the availability of updated textbooks and sufficient per-pupil resources; (4) team and individual planning time; (5) mentoring opportunities; (6) curricular breadth; (7) professional autonomy and flexibility; (8) competitive salaries and benefits; and (9) opportunities for professional growth.

Discussion: The Department agrees that LEA efforts to recruit and retain effective teachers to work in persistently lowest-achieving schools (as defined in this notice) will be essential for the success of the turnaround, restart, and transformation models. We also note that several of the conditions suggested by the commenters—such as planning time, professional autonomy and flexibility, and competitive salaries and benefits—are likely to be addressed under each of these models. However, other ''conditions,'' such as the quality of school facilities and class size, are not critical elements of the school intervention models required by this notice and we decline to require LEAs to address them in their applications for School Improvement Grants.

Changes: None.

LEA Budgets

Comment: One commenter requested that the Department clarify whether an LEA's budget must be submitted on a school-by-school basis or on a district-wide basis.

Discussion: We believe the language in section II.A.4 is clear that an LEA's budget must include school-by-school allocations for implementing an intervention or providing school improvement services. However, we have made explicit, as explained in the SEA application package, that an LEA must include in its application a separate budget for every Tier I and Tier II school that it commits to serve by implementing a school intervention model, as well as for each Tier III school that it will serve with school improvement funds. In addition, we have made clear in the SEA application package that an LEA's budget may include district-level activities that support implementation of the intervention models.

Changes: None.

Comment: One commenter recommended that each LEA be required to include in its budget submitted under proposed section II.A.3 a rationale for the proposed allocation of school improvement funds among Tier I, Tier II, and Tier III schools.

Discussion: We agree with the commenter's recommendation and are adding in new section II.A.2(a)(vi) of these final requirements (proposed II.A.3) a requirement that an LEA include in its application a budget indicating how it will allocate school improvement funds among Tier I, Tier II, and Tier III schools that it commits to serve. In addition, an LEA's proposed budget for its Tier I and Tier II schools must be of sufficient size and scope to implement the selected intervention models. An LEA also must describe in its application the amount of funds or value of benefits that it will provide to Tier III schools.

Changes: We have added a provision in new section II.A.2(a)(vi) of the final requirements (proposed II.A.3) that an LEA's application must ''[i]nclude a budget indicating how it will allocate school improvement funds among the Tier I, Tier II, and Tier III schools it commits to serve.''

Comment: One commenter asked whether school improvement funds could be used to fund or provide services to schools that feed into Tier I, Tier II or Tier III schools.

Discussion: LEAs may provide funds or services to such feeder schools only if these schools are Tier III schools that the LEA commits to serve as part of its application for a School Improvement Grant. For example, as noted in the preamble to the NPR, States may differentiate among Tier III schools by giving priority to LEAs that focus on such schools that are feeders to Tier I and Tier II schools.

Changes: None.

Comment: One commenter requested clarification as to whether school improvement funds could be used to pay the excess costs of transporting students to new schools when implementing the school closure model. Other commenters recommended that an LEA's budget for implementing the school closure model include the costs incurred by schools receiving additional students as a result of the closure.

Discussion: An LEA may use school improvement funds to pay some of the costs associated with closing a Tier I or Tier II school, including, for example, parent and community meetings regarding the school closure, services to help parents and students transition to a new school, or orientation activities that are specifically designed for students attending a new school. Other costs, such as revising transportation routes, making class assignments in a new school, or providing services to students in their new school, are regular responsibilities an LEA carries out for all students and may not be paid for with school improvement funds. The Department notes, however, that to the extent that a receiving school enrolls students from a closed school who are from low-income families, the receiving school should receive a larger Title I, Part A allocation to assist in meeting the needs of such students, or may even qualify as a Title I school based on the inclusion of those students.

Changes: None.

Comment: One commenter asked the Department to clarify which Title I requirements apply to the use of section 1003(g) funds, particularly if a school is operating a schoolwide program.

Discussion: In general, school improvement funding provided under section 1003(g), as described in this notice, is intended, much like regular Title I funds for a schoolwide program, to be used to upgrade the instructional program of an entire school. This is why, for example, the Secretary has invited SEAs to request a waiver to permit a Title I school that is implementing a targeted assistance program, but that is not eligible to operate a schoolwide program, to operate a schoolwide program in order to implement a turnaround, restart, or transformation model. However, the Department expects that a school operating a schoolwide program that is implementing a turnaround, restart, or transformation model described in these final requirements would have to modify its schoolwide program plan and school improvement plan, if it is a separate plan, to account for changes required by the selected intervention model. In particular, we note that section 1114(b)(1)(B)(iv) of the ESEA requires a Title I schoolwide program to include schoolwide reform strategies that ''are consistent with, and are designed to implement, the State and local improvement plans, if any.''

Changes: None.

Comment: A number of commenters expressed a variety of concerns about the requirement in proposed section II.A.8 that an LEA demonstrate how it will sustain the interventions implemented with its school improvement grant after the period of funding has ended. Two commenters disagreed on the value of this requirement, with one declaring it essential and the other calling for its elimination in the final notice, while another commenter also appeared to

support its elimination because of a belief that the requirement would divert attention from the more important issue of how school improvement funds will be used. One commenter recommended that an LEA reserve a portion of its school improvement grant for sustainability efforts. Another commenter suggested that plans for continuing the interventions, rather than an absolute commitment that could be difficult to fulfill in difficult economic times, should be sufficient to satisfy the requirement in proposed section II.A.8.

Discussion: The purpose of proposed section II.A.8 was not to hold an LEA accountable for a future commitment, but to insist that an LEA receiving school improvement funds engage in thoughtful planning about how to sustain its school intervention models after the period of Federal support for these models ends. Ideally, once the ''heavy lifting'' of initial start-up and implementation of the intervention models is completed, an LEA should be able to phase out intensive support and continue implementation with existing levels of State and local education funding. It may also be possible for an LEA to use section 1003(a) school improvement funds to continue implementation of a school intervention model begun with a section 1003(g) School Improvement Grant. Alternatively, an LEA could use a portion of its regular Title I, Part A funds for this purpose. The key is that an LEA plan for the transition that will take place in three or less years. However, because proposed section II.A.8 duplicates new criterion I.A.4(a)(vi) in the final requirements, which, in accordance with new section II.A.2(a)(iv) in this notice must be addressed in an LEA's application, we are removing proposed section II.A.8 from the final requirements.

Changes: We have removed proposed section II.A.8 from the final requirements.

Accountability

Comment: A number of commenters supported the proposed requirement in section II.A.7 that an LEA establish and hold its Tier I and Tier II schools accountable for meeting, or being on track to meet, three-year student achievement goals for all students and for subgroups in reading/language arts and mathematics, as well as for making progress on the leading indicators. However, several commenters raised a concern about how the separate three-year achievement goals required under proposed section II.A.7 would fit into the existing ESEA State accountability systems that are based on adequate yearly progress toward State proficiency targets. Two of these commenters claimed that having separate goals could be confusing to parents, teachers, schools, and local communities. One commenter recommended that any goals established in the final requirements be aligned with existing accountability measures, while another opposed having separate accountability standards for schools receiving school improvement funds.

Other commenters recommended that the Department require in the final notice that SEAs, rather than LEAs, develop common goals and annual targets for improvement for all their LEAs and schools, with one commenter suggesting that this would result in higher expectations for increased student achievement. For example, one commenter suggested that SEAs might require schools to exceed the district-wide average on reading/language arts and mathematics assessments after three years, demonstrate a 25-point gain in assessment scores over the same period, or meet specific targets for student proficiency in reading/language arts and mathematics (with targets differing by tier of schools). Other commenters recommended the use of multiple measures of student performance for accountability purposes, such as English language proficiency scores, graduation rates, dropout rates, attendance rates, college acceptance rates, and the number of students enrolled in International Baccalaureate and Advanced Placement courses. In addition, some commenters called for setting performance targets for Tier III schools as well as for Tier I and II schools, others emphasized the importance of accountability for subgroup performance, and one expressed concern that being ''on track'' to meet goals would be a weak indicator of progress. Another commenter requested that the Department provide LEAs with flexibility to revise their three-year goals to accommodate their State's transition to common standards and assessments. Finally, several commenters encouraged broad dissemination of performance targets to parents and the general public.

Discussion: The Department recognizes the difficulty and complexity of setting appropriate goals and annual targets to be used by LEAs in holding schools accountable for successful implementation of the school intervention models required by this notice. In particular, the comments submitted on the NPR have highlighted the potential for confusion on the part of parents, teachers, principals, schools, and the general public resulting from yet another set of performance goals on top of those used by existing ESEA and State accountability systems. On the other hand, the Department believes that an LEA should have a measure more sensitive than AYP to ensure that its schools are implementing these requirements fully and effectively and to be able to cease funding schools if they are not. Accordingly, we are replacing the proposed requirement that an LEA develop and use three-year student achievement goals with the requirement to make progress on the leading indicators in section III of the final requirements and to establish annual goals for student achievement on the State's assessments in both reading/language arts and mathematics that the LEA will use to monitor each Tier I and Tier II school that receives school improvement funds. Those goals might include, for example, making at least one year's progress in reading/language arts and mathematics, as measured by the State's assessments; reducing the percentage of students who are non-proficient on the State's reading/language arts and mathematics assessments by 10 percent or more from the prior year; or meeting the academic achievement goals the State establishes in its Race to the Top application.

We believe this approach, by requiring LEAs to set meaningful annual goals for overall achievement in reading/language arts and mathematics and to examine progress on the leading indicators in their Tier I and Tier II schools, will enable LEAs to monitor the fidelity and early success with which those schools are implementing their selected intervention model. Because the focus of this requirement is on monitoring implementation in a relatively small number of schools, we do not believe an LEA's goals will contribute unduly to confusion regarding the accountability requirements under the ESEA.

We do not agree that LEAs should set specific separate performance targets for Tier III schools, primarily because the level of support and the interventions taken will vary widely among those schools. The performance of those schools is best measured through the existing, AYP-based ESEA accountability system. Finally, we expect LEAs to keep the public informed of the performance of Tier I and Tier II schools, but decline to add new requirements in this area.

Changes: We have revised proposed section II.A.7 to state that an LEA must establish annual goals for student achievement on the State's assessments in both reading/language arts and

mathematics that it will use to monitor each Tier I and Tier II school that receives school improvement funds.

Comment: Several commenters requested clarification regarding how LEAs must hold schools accountable for meeting the achievement goals required by proposed section II.A.7, with one commenter asking what sanctions would be appropriate for a school that does not meet its three-year student achievement goals and another asking whether the SEA may reallocate school improvement funds from a school that is not making the required progress to another LEA or school. Other commenters recommended implementing a different school intervention model in such cases; one of these commenters proposed expediting such changes by collecting data on leading indicators in the middle of the school year so that schools have as much time as possible to implement alternative interventions. Another commenter called instead for close monitoring and reporting on school progress, coupled with assistance in helping the school to meet its progress goals.

Discussion: In general, the Department believes that LEAs should have flexibility to determine the appropriate response when a Tier I or Tier II school implementing one of the four intervention models is not meeting the goals established under section II.A.7. In most cases, the Department would not recommend a quick decision either to change models or to reallocate school improvement funds to another school. Rather, an LEA should first take action to ensure that the selected intervention model is fully and effectively implemented. Turning around a persistently lowest-achieving school is not an easy task and, although the intervention models required by this final notice are intended to produce dramatic and rapid changes in such a school, such changes might not be reflected in improved achievement outcomes for a year or more. However, an LEA should expect to see significant improvement in leading indicators, such as improved attendance and fewer disciplinary incidents. If a Tier I or Tier II school simply proves unable or unwilling to successfully implement a school intervention model, an LEA, in consultation with its SEA, should consider stronger action, which may include starting over with a new model or reallocating school improvement funds to another school. Finally, the Department notes that an SEA may, if authorized under State law, take over either an LEA or a particular Tier I or Tier II school in order to implement effectively a school intervention model. However, in the absence of such a takeover, the SEA may not require an LEA to implement a particular school intervention model in a Tier I or Tier II school.

Changes: We have added language in new section II.B.2(c) stating that ''[a]n SEA may, consistent with State law, take over an LEA or specific Tier I or Tier II schools in order to implement the interventions in these requirements.'' New section II.B.2(d) states that ''[a]n SEA may not require an LEA to implement a particular model in one or more schools unless the SEA has taken over the LEA or school.''

Comment: Two commenters asked for clarification regarding the impact of the NPR on SEAs participating in the differentiated accountability pilot.

Discussion: In 2008, the Department offered SEAs the opportunity to submit a proposal to participate in the differentiated accountability pilot. Through this pilot, nine SEAs whose proposals were approved received flexibility through a waiver under section 9401 of the ESEA to differentiate how they implement the school and LEA accountability requirements in section 1116 of the ESEA by, for example, categorizing schools for improvement, altering the school improvement timeline, or implementing different interventions based on severity of need. Any SEA that has been approved to participate in the differentiated accountability pilot may continue to do so. However, the SEA must ensure that its LEAs use school improvement funds available under section 1003(g) of the ESEA only to implement school intervention models consistent with this notice in their Tier I or Tier II schools. Thus, to the extent that a State's differentiated accountability plan is inconsistent with the requirements in this notice, an LEA receiving school improvement funds must use those funds in accordance with the requirements of this notice, even if the State's differentiated accountability plan would permit greater flexibility. To clarify this matter, we are adding a provision in section II.B.12 requiring an SEA participating in the differentiated accountability pilot to ensure that its LEAs use school improvement funds available under section 1003(g) in Tier I or Tier II schools consistent with these requirements.

Changes: New section II.B.12 states that ''[a]n SEA that is participating in the 'differentiated accountability pilot' must ensure that its LEAs use school improvement funds available under section 1003(g) of the ESEA in a Tier I or Tier II school consistent with these requirements.''

Flexibility and Waivers

Comment: One commenter recommended that the final notice permit SEAs and LEAs to use grant funds for a school currently funded with school improvement funds for one more year (without regard to the tiers and prescribed interventions in these final requirements) if the school is demonstrating significant progress and needs an additional year of assistance to meet its achievement goals.

Discussion: The final requirements, in section I.B, Providing Flexibility, permit an SEA to award funds to an LEA to continue or complete an intervention, or part of an intervention, in a Tier I school that meets the requirements of the turnaround, restart, or transformation models. In addition, an LEA would be permitted to use its School Improvement Grant to continue funding previously implemented school improvement activities in Tier III schools. However, an LEA with Tier I and Tier II schools that currently are not implementing part or all of one of the school intervention models required by the final requirements is not permitted to use school improvement funds to continue existing improvement activities but, instead, must implement one of the four school intervention models in each of the Tier I and Tier II schools it commits to serve.

Changes: None.

Comment: Two commenters supported the provision in proposed section I.B.3 allowing an SEA to request a waiver permitting a Tier I school that is ineligible to operate a schoolwide program and is operating a targeted assistance program to operate a schoolwide program in order to implement an intervention that meets the requirements for the turnaround, restart, and transformation models. However, another commenter objected that such a waiver would result in the provision of services to students who were not the intended beneficiaries of the Title I program. This commenter added that such a major departure in the Title I program should be addressed by Congress in statute and not through a waiver.

Discussion: The Department appreciates the support of some commenters for the proposal that would permit an SEA to seek a waiver permitting a Title I school operating a targeted assistance program, and that is ineligible for a schoolwide program, to operate a schoolwide program in order to implement a turnaround, restart, or transformation model or to close a

school. The Department does not agree that such a waiver would be a major departure from the current Title I program, which already recognizes, through the existing schoolwide program authority, that improving the performance of an entire school often is the best way to serve the intended beneficiaries of the Title I program.

Changes: None.

Comment: Several commenters supported the opportunity under proposed section I.B.2 for SEAs to request a waiver of the school improvement timeline under section 1116(b) of the ESEA for Tier I schools implementing the turnaround or restart models, with one commenter emphasizing that waiving existing school improvement requirements would give grantees the flexibility needed to focus on the interventions that would have the greatest impact on academic achievement. However, several other commenters did not support allowing Tier I schools to start over in the school improvement timeline, primarily because it would result in the loss of public school choice and supplemental educational services (SES) options for students attending those schools. One of these commenters also stated that SES, in particular, could help a Tier I school by improving the achievement of its students. Other commenters believed that it would be unfair to exempt only Tier I schools from ESEA school improvement requirements, and that schools should not be permitted to exit ESEA improvement status until they have improved student achievement. Other commenters suggested alternatives to the proposed waiver, such as providing a ''blanket waiver'' to eligible schools to reduce administrative burdens on SEAs and LEAs; permitting schools that are improving student achievement to start over regardless of the intervention chosen; allowing Tier I schools to exit improvement status after one year of making AYP, rather than the two consecutive years required by current law and regulation; and allowing all schools receiving school improvement funds to start over in the ESEA improvement timeline. Finally, one commenter requested clarification of the duration of the proposed waiver of the school improvement timeline.

Discussion: The Department appreciates the support of some commenters for the flexibility afforded by the proposal to permit an SEA to seek a waiver that would permit turnaround and restart schools to start over in the ESEA improvement timeline and, thus, gain an exemption from the requirements of section 1116 of the ESEA, including public school choice and SES options. We understand the concern of those commenters who argued that this waiver potentially results in the loss of public school choice and SES options to students in the persistently lowest-achieving schools, but we believe this loss is offset, at least partially, by the benefits to students from the implementation of the school intervention models. Further, the Department believes that the loss of these options is warranted only in the case of Tier I schools that are implementing the turnaround or restart models, and declines to modify or expand the application of the proposed waiver as recommended by some commenters. Finally, a waiver to start over in the improvement timeline would exempt a Tier I school from the requirements of section 1116 of the ESEA only for two years, after which time it, like any other school, would enter improvement status if it does not make adequate yearly progress for two consecutive years.

Change: None.

Comment: None.

Discussion: As noted in section I.B, the Secretary invites SEAs to seek several waivers in order to enable their LEAs to implement the four school intervention models in these final requirements. Those waivers include: A waiver of section 1116(b)(12) of the ESEA to permit LEAs to allow Tier I schools that implement a turnaround or restart model to ''start over'' in the school improvement timeline; a waiver of the 40 percent poverty eligibility threshold in section 1114(a)(1) of the ESEA to permit LEAs to implement a schoolwide program in a Tier I targeted assistance school; a waiver of the requirements in section 1003(g)(1) and (7) of the ESEA that limit the use of school improvement funds to Title I schools in improvement, corrective action, and restructuring in order to permit LEAs to use school improvement funds to serve Tier II schools; and a waiver of section 421(b) of the General Education Provisions Act to extend the period of availability of school improvement funds for the SEA and all its LEAs to September 30, 2013. Although the Secretary specifically invites SEAs to apply for these waivers, an LEA may seek a waiver if its SEA does not.

Changes: New section I.B.4 clarifies that an SEA may seek a waiver from the Secretary to enable an LEA to use school Improvement funds to serve a Tier II secondary school. New section I.B.5 clarifies that an SEA may seek a waiver from the Secretary to extend the period of availability of school improvement funds beyond September 30, 2011 so as to make those funds available to the SEA and its LEAs for up to three years. New I.B.6 makes clear that, if an SEA does not seek a waiver under section I.B.2, 3, 4, or 5, an LEA may seek a waiver from the Secretary.

SEA Responsibilities

Comment: One commenter objected to language in the preamble of the NPR encouraging SEAs to eliminate barriers to the implementation of the school intervention models, such as State laws, regulations, or policies that (1) limit the SEA's authority to intervene in low-achieving schools, (2) limit the number of charter schools that may operate in the State, or (3) impede efforts to recruit and retain effective teachers and principals in low-achieving schools. The commenter particularly objected to what it described as encouraging the removal of limits on the number of charter schools operating in a State without regard to the quality of the schools.

Discussion: The language opposed by this commenter is merely intended to encourage SEAs to expand their capacity to implement successfully the school intervention models described in this notice. In particular, States that unnecessarily or arbitrarily limit the number of charter schools operating within their boundaries limit the restart model as an available option for their persistently lowest-achieving schools. However, the language in the preamble is not intended to promote unlimited expansion of charter schools regardless of quality. Indeed, the restart model requires the selection of a charter school operator, CMO, or EMO ''that has been selected through a rigorous review process.''

Changes: None.

Comment: One commenter suggested that States be given greater discretion to limit the pool of LEAs applying for school improvement grants and to provide technical assistance in conducting a needs analysis and selecting appropriate interventions. The purpose of these changes would be to prevent LEAs from using scarce resources to prepare applications that are not likely to be funded (due to the size of School Improvement Grant allocations to States) and to ensure that LEAs with limited capacity to conduct comprehensive needs assessments receive the assistance they need to make the most of their School Improvement Grants. Another commenter recommended that SEAs be required to identify the poorest-performing LEAs with three or fewer schools that are not willing to implement one of the four

school intervention models, take those LEAs over, and require the schools in the LEAs to implement the turnaround model. This commenter also proposed giving parents the opportunity to recommend schools for ''forced turnarounds.'' On the other hand, three commenters urged the Department to clarify in the final notice that LEAs have the authority to determine both the number of schools to be served and the models that will be implemented.

Discussion: The Department believes that giving SEAs the discretion to limit the pool of LEAs that may apply for School Improvement Grants would be inconsistent with the goal of using the large amount of ARRA school improvement funding to successfully turn around as many of the Nation's persistently lowest-achieving schools as possible over the next three years. However, we agree that LEAs with limited capacity to undertake the required interventions should receive technical and other assistance from the State and external providers that will maximize their chances of success under this program. Also, new section II.B.10(a), which requires an SEA in a State in which all Tier I schools are not served to carry over a portion of its FY 2009 School Improvement Grant for a second competition in FY 2010, will give LEAs with limited capacity more time to conduct comprehensive assessments, select appropriate school intervention models, and identify external partners to help implement those models. We cannot require an SEA to take over LEAs that are unwilling or lack capacity to implement school intervention models in their persistently lowest-achieving schools; however, we are adding language in new section II.B.2(c) to clarify that an SEA may, if authorized under State law, take over either an LEA or a particular school in order to implement a school intervention model. In the absence of such a takeover, an SEA may not require an LEA to implement a particular school intervention model. The SEA role is to identify schools and assess LEA capacity to implement the four school intervention models, but the choice of interventions is up to the LEA.

Changes: New section II.B.2(c) states that ''[a]n SEA may, consistent with State law, take over an LEA or specific Tier I or Tier II schools in order to implement the interventions in these requirements.'' In addition, new section II.B.2(d) states that ''[a]n SEA may not require an LEA to implement a particular model in one or more schools unless the SEA has taken over the LEA or school.''

Comment: Two commenters recommended that the Department require SEAs to monitor LEA implementation of school improvement grants, including by making at least one onsite visit to each school. Another commenter recommended that SEAs be required to develop or identify rubrics for school needs assessments that schools and LEAs can use to plan school improvement activities and that SEAs also visit, or designate other organizations to visit, schools receiving school improvement funds in order to ensure that funded activities are well thought out and implemented as intended.

Discussion: The Department believes that SEAs should have flexibility to develop or adopt tools that schools and LEAs can use to assess their school improvement needs and select appropriate interventions and to determine their own methods and procedures for monitoring LEA implementation of a School Improvement Grant; therefore, we decline to specify or require particular methods and procedures in this final notice. We note, however, that an SEA, under 34 CFR 80.40(a), must monitor the day-to-day operations of activities supported with Federal funds, which would include School Improvement Grants. To reinforce this requirement, we have included a specific assurance to this effect in an SEA's application for a School Improvement Grant. In addition, we note that the leading indicators required in section III of the final requirements should provide a sound foundation for using data to monitor and hold LEAs accountable for effective use of school improvement funds and appropriate implementation of school intervention models, and we encourage SEAs to use these indicators, as well as others, for this purpose.

Changes: None.

Comment: One commenter recommended that SEAs be required to conduct a review of potential external partners using a rigorous standard that the SEA has developed in collaboration with stakeholder groups. This commenter further recommended that the standard for review require such partners to demonstrate several years of increasing student achievement. Other commenters recommended that the Department provide guidance on key elements necessary for performing a rigorous review, including definitions of CMOs and EMOs, and a process by which CMOs and EMOs report data on their effectiveness to the Department, including their impact on overall student achievement as well as achievement disaggregated by subgroups.

Discussion: The Department has added definitions of CMO and EMO in section I.A.2(b). We also make clear in new section II.A.8 that an LEA must hold charter school operators, CMOs, and EMOs accountable for meeting these final requirements. We believe that SEAs and LEAs should have flexibility to determine their own rigorous review process for screening charter school operators, CMOs, and EMOs, and decline to regulate further in this area. However, we encourage SEAs to provide technical assistance and other support related to the selection of external providers and are requiring an SEA to explain in its application for a School Improvement Grant how it will use the school improvement funds the SEA retains at the State level to provide technical assistance to its LEAs.

Changes: Section I.A.2(b) includes definitions of CMO and EMO. In addition, new section II.A.8 makes clear that an LEA must hold charter school operators, CMOs, and EMOs accountable for meeting the final requirements. Finally, section II.D requires an SEA to describe in its application to the Secretary for a School Improvement Grant how it will use the school improvement funds available at the State level. The SEA may use those funds to provide technical assistance to its LEAs.

Comment: One commenter recommended requiring SEAs and LEAs to make funds available to partner CMOs and EMOs to help those organizations plan and build capacity to assist in implementing required school intervention models.

Discussion: The Department expects that planning and capacity-building related to the implementation of school intervention models will be part of LEA contracts with CMOs and EMOs, but believes that this should be a subject for negotiation between LEAs and their CMO and EMO partners and not for regulation by the Department. Similarly, SEAs may choose to contract with CMOs and EMOs, using the SEA share of school improvement funds, as part of their overall effort to build local capacity to carry out school intervention models in Tier I and Tier II schools; however, we decline to require such action on the part of SEAs.

Changes: None.

Comment: A number of commenters, citing the importance of building overall LEA capacity—both administratively and in areas related to school improvement—recommended that the Department place a stronger emphasis on planning and funding such capacity

building as part of the School Improvement Grants program. For example, two commenters recommended that SEAs be permitted to allocate a substantial portion of school improvement funds to developing the capacity at the LEA level to analyze school needs and match interventions to those needs, while another commenter requested guidance on how LEAs can reserve funds to create a ''turnaround office'' or to provide technical assistance and support to their Tier I schools. One commenter expressed concern that, because fewer LEAs have experience with high school improvement, LEAs may determine that they lack the capacity to serve high schools.

Discussion: Section II.D of these final requirements requires an SEA, in its application for a School Improvement Grant to describe the activities it will undertake through the use of the school improvement funds the SEA may retain at the State level. Those activities could include supporting LEAs and schools in implementing the school intervention models required by this notice by (1) helping to identify new leaders and teachers; (2) helping to identify, screen, and select partners that will support selected intervention models; and (3) monitoring implementation of interventions and providing assistance where needed. In addition, LEAs have flexibility to include in their proposed budgets funding that they will use to build their capacity to support the effective implementation of required intervention models in participating Title I schools.

Changes: Section II.D requires an SEA to describe in its application to the Secretary for a School Improvement Grant how it will use the school improvement funds available at the State level, for example, to provide technical assistance to its LEAs.

Comment: One commenter noted that rural LEAs may require assistance in identifying technical assistance providers that can work with them to implement school improvement interventions because most of these providers are located in metropolitan areas.

Discussion: The Department agrees with this commenter and notes that the SEA application released with this final notice requires SEAs to describe how they will use the school improvement funds they retain to provide technical assistance to their LEAs, which can include helping their LEAs, including rural LEAs, recruit, screen, and select potential partners that will assist in the implementation of school intervention models.

Changes: Section II.D requires an SEA to describe in its application to the Secretary for a School Improvement Grant how it will use the school improvement funds available at the State level, for example, to provide technical assistance to its LEAs.

Comment: One commenter recommended adding to the final notice the specific language in section 1003(g)(7) of the ESEA stating that an SEA may, with the approval of the LEA, directly provide for school improvement activities or arrange for their provision through other entities. Another commenter recommended expanding the list of examples of other entities to include comprehensive centers.

Discussion: The Department believes that the statute is clear on the alternative to direct LEA subgrants and declines to include the proposed language in the final requirements. We note that, given the comprehensiveness of the four school intervention models, it will be necessary for any entity providing direct services to possess the requisite authority and control over local operations in order to implement those interventions in Tier I and Tier II schools.

Changes: None.

Comment: One commenter recommended that SEAs be required to submit a plan detailing how they will identify and share best practices from fast-improving schools.

Discussion: The Department agrees that this information would be useful in general, but will not require SEAs to develop such plans.

Changes: None.

Comment: None.

Discussion: Section 1903(b) of the ESEA requires an SEA to consult with its Committee of Practitioners before issuing any rules, regulations, or policies under Title I that affect an LEA's participation in Title I programs. Because an SEA must include in its application for a School Improvement Grant policies that affect an LEA's participation in the program, such as the SEA's priorities for funding LEAs and how it will evaluate the strength of an LEA's commitment, the SEA must seek the advice of its Committee of Practitioners prior to finalizing these policies. In addition, we recommend that the SEA consult with other stakeholders not represented on the Committee of Practitioners, such as labor representatives, charter school authorizers, business leaders, and community organizers.

Changes: New section II.B.13 clarifies that, before submitting its application for a School Improvement Grant to the Department, an SEA must consult with its Committee of Practitioners regarding the rules and policies contained therein and may consult with other stakeholders that have an interest in its application.

SEA Allocations

Comment: A number of commenters supported the proposed requirements related to the allocation of school improvement funds to LEAs and schools, including concentrating funds on schools with the greatest need, serving Title I-eligible secondary schools, using more than $500,000 in individual schools, and making three-year awards. Two commenters expressed concern that, despite these provisions, funding would be insufficient to fully implement or sustain school interventions based on the turnaround or transformation models. One of these commenters recommended strengthening the assurance that SEAs provide the funds needed, over a number of years, to carry out required interventions, while the other commenter called for unconditional three-year awards with funding available beyond September 30, 2011. Other commenters suggested that we include more specific requirements for State subgrants of school improvement funds such as linking the size of LEA awards to school size, poverty level, and academic need; and making per-pupil allocations within minimum and maximum award levels.

Discussion: The Department appreciates the comments supporting its efforts to ensure, within the limitations of the statute, that LEAs receive sufficient funds to match, as closely as possible, their multi-year budgets for successful implementation of proposed school intervention models. The Department recognizes that implementing these models requires the commitment of significant resources over several years and has emphasized, in particular, that (1) LEAs have flexibility to spend more than $500,000 per year in their Tier I and Tier II schools, and (2) the Secretary will waive the period of availability of school improvement funds beyond September 30, 2011 so that these funds are available to LEAs for three years. We are adding language in section II.A.4 clarifying that an LEA's proposed budget must cover the period of availability of the school improvement funds, taking into account any such waiver. As noted under SEA Responsibilities in the preamble to the NPR, experts estimate that the cost of turning around a persistently lowest-achieving school with 500 students can range as high as $1,000,000 annually;

the School Improvement Grants program described in these final requirements has been structured to enable SEAs to provide this level of support for LEAs implementing the four school intervention models. We also decline to require SEAs to make unconditional three-year awards to LEAs. Rather, we believe an SEA needs the option not to renew an LEA's School Improvement Grant if its participating schools, particularly its Tier I and Tier II schools are not complying with these final requirements. Finally, LEAs have discretion to base their proposed budgets on a variety of factors, including factors suggested by the commenters, such as school size and poverty status. We also are clarifying in section II.A.4 that an LEA's budget may include less than $500,000 for a Tier I or Tier II school not only if the LEA proposes to implement the school closure model for such a school but also if it demonstrates that less funding is needed to implement the selected intervention.

Changes: We have added language in section II.A.4 stating that ''[t]he LEA's budget must cover the period of availability of the school improvement funds, taking into account any waivers extending the period of availability received by the SEA or LEA.'' Conforming language has been added to section II.B.9 regarding SEA responsibilities. Revised section II.A.4 also states that an LEA's budget for a Tier I or Tier II school may include less than $500,000 per year ''if the LEA's budget shows that less funding is needed to implement its selected intervention fully and effectively.''

Comment: A number of commenters raised concerns regarding the timing of School Improvement Grants, particularly with respect to the funds available through the regular FY 2009 appropriation. Two commenters objected to the Department's decision to combine the school improvement funds from the regular FY 2009 appropriation with the funds from the ARRA and award all school improvement funds following the submission of a new application by an SEA. The commenters noted that LEAs would then need to wait and delay planned improvements and restructuring activities for one full year. Another commenter asked whether the funds would be awarded in one grant award. One commenter stated that it would be difficult to spend school improvement funds in the 2009–2010 school year if it received the funds late in the year. One commenter recommended making two cohorts of School Improvement Grants, one in September 2010 and one in September 2011.

Discussion: The Department understands, and to some degree shares, the concerns expressed by commenters regarding the timing of the award of FY 2009 school improvement funds. However, we have taken great care to balance the goal of maximizing the impact of the extraordinary amount of school improvement funds provided by the ARRA with the understandable desire of SEAs to access these funds on the usual award schedule. Ultimately, the Department decided that the potential benefits of this one-time opportunity to successfully turn around the Nation's persistently lowest-achieving schools justified a longer application and award process that will likely result in delaying significant expenditure of FY 2009 school improvement funds until the 2010–2011 school year.

However, in recognition of the challenges of administering FY 2009 school improvement funds, including ARRA funds, consistent with this notice, we are adding language in the final requirements that would permit, and in some cases require, an SEA to carry over FY 2009 school improvement funds and award them in combination with FY 2010 school improvement funds (depending on the availability of appropriations). The new provisions are intended to (1) serve as many Tier I schools as possible with FY 2009 school improvement funds; (2) give SEAs that are able to serve all their Tier I schools with less than the full amount of their FY 2009 School Improvement Grant allocations the flexibility to reserve a portion of those funds to serve additional Tier I schools in the following year; and (3) accommodate the additional time that may be required by some LEAs to fully plan for the efficient and effective implementation of the four school intervention models in Tier I and Tier II schools and for significant interventions and supports for Tier III schools. Accordingly, an LEA could propose in its FY 2010 application to serve those Tier I and Tier II schools that it did not include in its FY 2009 application.

Changes: We have added new section II.B.10(a), which states that ''[i]f not every Tier I school in a State is served with FY 2009 school improvement funds, an SEA must carry over 25 percent of its FY 2009 funds, combine those funds with FY 2010 school improvement funds (depending on the availability of appropriations), and award those funds to eligible LEAs consistent with these requirements.'' This section does not require such carryover, however, if an SEA does not have sufficient school improvement funds to serve all the Tier I schools in the State. New section II.B.10(b) permits an SEA in which each Tier I school has been served with FY 2009 school improvement funds to ''reserve up to 25 percent of its FY 2009 allocation and award those funds in combination with its FY 2010 funds (depending on the availability of appropriations) consistent with these requirements.'' New section II.B.11 requires an SEA to exclude from any competition for school improvement funds following FY 2009 ''any school that was previously identified as a Tier I or Tier II school and in which an LEA is implementing one of the four interventions identified in these requirements using funds made available under section 1003(g) of the ESEA.''

Comment: One commenter asked for clarification regarding which LEAs are eligible to receive school improvement funds. This commenter asked if only LEAs receiving funds in the first year of the grant are eligible to continue to receive funds under section 1003(g) for the three year period and whether additional Tier I and Tier II schools could receive funding at a later point.

Discussion: In general, the FY 2009 School Improvement Grants covered by these final requirements are intended to provide funds to LEAs that commit to serve Tier I, Tier II, and Tier III schools beginning in the 2010–2011 school year. Although some SEAs with a limited number of Tier I, Tier II, and Tier III schools may have sufficient funding to make awards to other LEAs with Tier I, Tier II, and Tier III schools in future years, section II.E of this notice allows the Secretary to reallocate any such excess funds to other States. However, as discussed above, we are adding provisions to these final requirements permitting, and in some cases requiring, SEAs to reserve a portion of their FY 2009 school improvement funds, including ARRA funds, to make a second cohort of awards in combination with FY 2010 funds (assuming the availability of a section 1003(g) appropriation in FY 2010). SEAs reserving FY 2009 funds in this manner would be able to make awards to additional Tier I, Tier II, and Tier III schools in the 2011–2012 school year.

Changes: None.

Comment: A number of commenters expressed concern about the emphasis the Department placed in the NPR on serving Tier I and Tier II schools, particularly in cases where there may not be sufficient funding available to make awards to all LEAs. For example, one commenter recommended allowing

SEAs to use school improvement funds for evidence-based interventions to stop further declines in the performance of Tier III schools. Another commenter claimed that there is no statutory basis for the provision in proposed section II.B.7, which would allow SEAs to ensure an appropriate geographic distribution of Tier I and Tier II schools that are served by the School Improvement Grants program. One commenter suggested as an alternative limiting the number of funded Tier III schools unless an LEA is serving all of its Tier I and Tier II schools.

Discussion: The purpose of the School Improvement Grants program, as implemented in the final requirements, is not to serve all LEAs with schools in improvement, corrective action, or restructuring, but to take advantage of the large amount of funding provided by the ARRA to enable LEAs with the persistently lowest-achieving schools in each State (*i.e.,* Tier I and Tier II schools) to implement effectively selected intervention models that hold the most potential for breaking the cycle of educational failure in these schools. The Department believes that, by requiring each SEA to identify its persistently lowest-achieving schools and to require LEAs seeking a School Improvement Grant to undertake certain interventions in these schools, it is, consistent with the statutory requirement, ensuring that those LEAs with both the greatest need and the strongest commitment to making effective use of such funds are being served. Consequently, we believe it is appropriate, in situations where total available funding is insufficient to serve all LEAs, for SEAs to give priority first to LEAs with Tier I and Tier II schools and then to LEAs with Tier I schools, rather than expanding support for less needy Tier III schools.

The priority on Tier I and Tier II schools is not intended to result in the geographic concentration of School Improvement Grants; however, such a concentration could occur in some States where large numbers of Tier I and Tier II schools are located in a handful of LEAs. Hence, we are including the provision in section II.B.7 that allows, but does not require, an SEA to ensure that such schools can be served throughout the State. We believe this flexibility is supported by the language in the statute permitting an SEA to determine which LEAs have the greatest need for and strongest commitment to use school improvement funds.

Changes: We have revised section II.B.4 to make clear that, if an SEA does not have sufficient school improvement funds to award, for up to three years, a grant to each LEA that submits an approvable application, the SEA must first give priority to LEAs that apply to serve both Tier I and Tier II schools and then give priority to LEAs that apply to serve Tier I schools.

Comment: One commenter recommended that the Department establish an absolute priority for LEAs implementing the restart model, claiming that it was the most rigorous of the proposed school intervention models.

Discussion: The Department does not believe it would be appropriate to give priority to any particular model in situations where insufficient funding is available to serve all Tier I and Tier II schools, as such an approach would unfairly favor those LEAs in which the chosen model could most readily be implemented. For example, favoring the restart model could disadvantage rural areas where few CMOs or EMOs may choose to operate.

Changes: None.

Comment: One commenter suggested that Tier II schools with feeder schools participating in Title I should generate funding under the School Improvement Grants program.

Discussion: Only participating Title I schools in improvement, corrective action, or restructuring generate funding under the requirements in section 1003(g) of the ESEA, which authorizes the School Improvement Grants program. We have no authority to alter that requirement through regulatory action.

Changes: None.

Comment: One commenter suggested that the Department should revise school improvement funding requirements in the final notice to help address the growing school financial inequity in virtually every American metropolitan area.

Discussion: The Department believes that the large amount of school improvement funds provided by the ARRA, coupled with the final requirements to provide concentrated, multi-year awards to support the successful implementation of four school intervention models, carries the potential for addressing the funding inequities that affect many of the Nation's persistently lowest-achieving schools. However, the statutory focus of the School Improvement Grants program is on low-achieving schools—*i.e.,* Title I schools in improvement, corrective action, or restructuring—and not on funding equity.

Changes: None.

SEA Share of Allocations

Comment: Several commenters said that there is an immediate need for school improvement funds at the State level. One commenter asked whether the start date of the availability of the school improvement funds would be retroactive to July 1, 2009 so that an SEA could reimburse itself for costs incurred prior to the receipt of its School Improvement Grant, noting that these funds are needed to provide technical assistance to LEAs to support current school improvement activities. Another commenter asked whether an SEA could access school improvement funds reserved under section 1003(a) of the ESEA that exceed the five percent authorized in the statute.

Discussion: In recognition of the immediate costs that SEAs are likely to incur in providing school improvement-related technical and other assistance to LEAs, the Department has decided to make available immediately the full five percent share of FY 2009 school improvement funds that an SEA may reserve under section 1003(g)(8) of the ESEA for administration, technical assistance, and evaluation purposes, including removing barriers to and setting the conditions for implementing the school intervention models in Tier I and Tier II schools.

Changes: The Department is not making any changes to the final requirements in response to these comments but, as described elsewhere in this document, will immediately award to each State the five percent of its FY 2009 School Improvement Grant, including both the regular FY 2009 appropriation for School Improvement Grants and funds provided by the ARRA, that SEAs may reserve under section 1003(g)(8) of the ESEA for administration, technical assistance, and evaluation purposes.

Comment: Several commenters recommended that the Department waive the statutory five percent cap on the amount of school improvement funds an SEA may reserve for administration, technical assistance, and evaluation purposes. These commenters cited a variety of State responsibilities under the School Improvement Grants program that may require additional funding, such as intensive planning and consultation with school improvement partners, the development and administration of a rigorous application process, technical assistance to LEAs on evaluating and choosing external partners, determining LEA capacity to implement models, compliance monitoring, and direct State intervention in low-achieving schools

and LEAs. However, one commenter called for strict adherence to the five-percent cap, even in cases where State allocations are spent over a two-year period.

Discussion: The Department acknowledges that SEAs have significant administrative responsibilities under the School Improvement Grants program and, as noted earlier, has taken two actions to address this concern. First, the Secretary published in the **Federal Register** a notice of final adjustments that permits each SEA to reserve an additional percentage of Title I, Part A funds (0.3 or 0.5 percent of its Title I, Part A ARRA allocation, depending on whether the SEA requests waivers of certain requirements) to help defray the costs associated with data collection and reporting requirements under the ARRA (74 FR 55215 (Oct. 27, 2009)). This increase in State administrative funds may be used to support data collection activities associated with ARRA funds, including those required by ARRA School Improvement Grants. Second, the Secretary is awarding immediately the full amount each State may reserve from its FY 2009 allocation of school improvement funds (including its ARRA School Improvement Grant) for State administration, technical assistance, and evaluation. These funds may be used at the State level for such activities as preparing the State application and developing LEA applications as well as providing technical assistance to LEAs with persistently lowest-achieving schools that will be likely to receive school improvement funds. The Secretary believes that, together, these actions should provide sufficient funds to cover an SEA's administrative costs.

Changes: None.

Reporting Metrics

Comment: Several commenters supported the reporting metrics proposed in the NPR, including the use of multiple measures of school performance such as instructional minutes, enrollment in advanced coursework, attendance, discipline, and truancy. Other commenters viewed some of the metrics as unnecessary, citing, in particular, instructional minutes and teacher attendance. One commenter indicated that the proposed measures will not yield the information LEAs need to track the progress of reform strategies, because the metrics do not address professional development, formative assessments, time for collaboration, and family/community engagement. Finally, one commenter recommended that SEAs be required to collect data on the distribution of teachers in the highest and lowest performance quartiles, while another claimed that the proposed collection of information on the distribution of teachers by performance level and on teacher attendance exceeded the Department's statutory authority and is not supported by research. This commenter also expressed concern about the possible manipulation of such data, urging the Department instead to collect data on teachers assigned out of field, teachers teaching with emergency permits, teacher turnover, and teacher satisfaction.

Discussion: The Department appreciates the expressions of support for the reporting metrics included in the NPR. We recognize that there are many possible progress and outcome indicators that could be used to measure the effectiveness of the school intervention models, and the metrics included in the NPR reflected careful consideration of the best combination of existing and new indicators that we believed would achieve this goal while minimizing data collection burdens on SEAs and LEAs. We disagree with the commenters who stated that some of these indicators are unnecessary. In particular, we believe indicators of the length of the school year and teacher attendance rates measure essential aspects of successful school interventions, *i.e.,* the use of additional time to improve instruction and changes that improve working conditions for teachers. However, we are slightly modifying these two indicators in the final requirements, changing ''number of instructional minutes'' to ''number of minutes within the school year'' to acknowledge that increases in the length of the school day or year are not only for instructional purposes, and clarifying that by ''teacher attendance'' we mean ''teacher attendance rate.'' Also, we are retaining the requirement for SEAs to collect data on the distribution of teachers by performance level on an LEA's teacher evaluation system, as we believe that collecting such data, as well as teacher attendance rate data, is fully consistent with the ARRA's emphasis on improving teacher effectiveness and the distribution of effective teachers. We also believe that efforts to manipulate such data are likely to be transparent and thus, if evident, will facilitate monitoring and accountability efforts.

Changes: We have changed ''Number of instructional minutes'' to ''Number of minutes within the school year'' and ''Teacher attendance'' to ''Teacher attendance rate.''

Comment: A large number of commenters recommended further changes and additions to the reporting metrics. A number of the commenters, for example, suggested modifications to proposed data elements, such as collecting the data over time; comparing the data for School Improvement Grant recipients with other schools in the State; ensuring the comparability of teacher attendance data across States and LEAs; defining the term ''advanced coursework''; and measuring completion rather than enrollment in advanced courses. Other commenters suggested that we add metrics, such as Title I eligibility and participation data; achievement data from the National Assessment of Educational Progress (NAEP); data on completion of a college-and-career-ready course of study; the proficiency scores of students with limited English proficiency; data on the type of English proficiency instructional programs offered at the schools receiving school improvement funds; and program participation and achievement data for limited English proficient students. Other commenters suggested additional metrics related to parent and family involvement, expanding learning time, music, art, foreign languages, physical education, class-size ratios, classes taught in temporary settings, parental participation, school safety, professional development, longitudinal surveys of high school graduates, and qualitative data.

Discussion: Although we appreciate the many suggestions that commenters offered regarding additional data that might be collected for Tier I and Tier II schools, we think requiring the collection of data on additional metrics would be burdensome on SEAs and LEAs to collect and report relative to how useful the data would be in evaluating the effectiveness of LEA implementation of the school intervention models. Thus, we decline to add these proposed additional measures to the reporting metrics in the final requirements, though we would hasten to add that SEAs and LEAs are encouraged to collect and use any data above and beyond these requirements that they believe will assist in the effective implementation of the four school intervention models. In addition, we do agree with recommendations to clarify certain indicators in the NPR, particularly with regard to the collection of data over time and to advanced coursework. To clarify that we want to compare changes in these indicators over time, we are including in the final requirements a new section III.A.4, requiring an SEA to report all metrics for the school year prior to

implementation of the school intervention models, to serve as a baseline, and for each of the following years for which the SEA receives a School Improvement Grant. We also agree that the number and percentage of students completing advanced coursework would be more meaningful than the number and percentage of students enrolled in advanced coursework.

Changes: We have modified the reporting metric on advanced coursework in high schools to require the SEA to report on the number and percentage of students in Tier I and Tier II schools completing such coursework, rather than merely enrolling in these courses. We also have added the following language in section III.A.4 that applies to all reporting metrics: ''An SEA must report these metrics for the school year prior to implementing the intervention, if the data are available, to serve as a baseline, and for each year thereafter for which the SEA allocates school improvement funds under section 1003(g) of the ESEA.''

Comment: Several commenters urged the Department to clarify that ''average scores on State assessments across subgroups'' means ''average scores on State assessments by subgroups.''

Discussion: We agree that this indicator was unclear in the NPR, and are modifying its language in the final requirements. Specifically, we are clarifying that the average scale scores are on the State's reading/language arts and mathematics assessments; that they are by grade assessed; that they are for the ''all students'' group and for each subgroup identified in 34 CFR 200.13(b)(7); and that they are to be broken down by achievement quartile.

Changes: We have changed this indicator to read as follows: ''Average scale scores on State assessments in reading/language arts and in mathematics, by grade, for the 'all students' group, for each achievement quartile, and for each subgroup.''

Comment: One commenter noted that some States have alternate assessments that use a different scale than the regular assessments and contended that it would not be possible to generate an average scale score for all students assessed.

Discussion: We are clarifying, in the FAQ document that we intend to release soon after these requirements that States using a different scale for alternate assessments may submit average scale scores for all students assessed on regular assessments and average scale scores, if available, for students assessed using alternate assessments.

Changes: None.

Comment: Multiple commenters contended that the Reporting Metrics, particularly those that involve new data collections, will be administratively burdensome for SEAs and LEAs, with one commenter suggesting that the Department refrain from adding new reporting requirements until reauthorization of the ESEA. Another commenter recommended restricting reporting measures to those that States can collect through the LEA application and that the Department can collect through ED*Facts.* One commenter called for flexibility on the timing of when LEAs will have to report information not currently collected, while others recommended additional funding for reporting and evaluation activities, including the reservation of one percent of school improvement funds for this purpose.

Discussion: As shown in the table on reporting metrics included in the NPR, the Department exercised great care in selecting achievement measures and leading indicators that would minimize collection and reporting burdens on SEAs and LEAs. For example, only five of 20 proposed indicators were new for the School Improvement Grants program; others already are provided through ED*Facts* or reporting required by the State Fiscal Stabilization Fund. This approach has been maintained in these final requirements; therefore, the Department declines to permit SEAs to reserve additional School Improvement Grants funding for the collection and reporting of performance indicators. However, as discussed earlier in this final notice, the Secretary recently published in the **Federal Register** (74 FR 55215) a notice of final adjustments that permits each State to reserve an additional percentage of Title I, Part A funds (0.3 or 0.5 percent of its Title I, Part A ARRA allocation, depending on whether an SEA requests waivers of certain requirements) to help defray the costs associated with data collection and reporting requirements under the ARRA, including data collection activities related to ARRA School Improvement Grants.

Changes: None.

Comment: Two commenters raised concerns about tracking the academic achievement of students from a closed school who enroll in a higher-achieving school to determine if their new school has contributed to improving their achievement. One of these commenters stated that it would be very burdensome to separate and aggregate the assessment results of only the students who move from a closed school.

Discussion: The Department agrees that it may be administratively burdensome to follow the progress of students who transfer to another, higher-achieving school under the school closure model; therefore, although we encourage SEAs or LEAs to conduct their own analysis, we decline to require such reporting. However, school closure accomplishes the goal of providing better educational opportunities to students in persistently lowest-achieving schools, and the schools to which these students transfer, to the extent they are schools receiving Title I funds, will be held accountable for their performance under the regular ESEA accountability requirements. The Department is clarifying in new section III.A.4 that, with respect to a school that is closed, an SEA need only report the identity of the school and the intervention taken—*i.e.,* school closure.

Changes: Section III.A.4 clarifies that, with respect to a school that is closed, an SEA need report only the identity of the school and the intervention taken—*i.e.,* school closure.

Comment: One commenter recommended that SEAs be required to provide the Department with a list of the Tier I, Tier II, and Tier III schools being funded. This commenter also recommended that the Department post State applications on its Web site to ensure transparency. Another commenter recommended that SEAs and LEAs be required to make freely available information on all outputs produced through these grants in order to promote the greatest possible impact of this investment.

Discussion: The Department proposed in section III.A.2 of the NPR requiring SEAs to report, for each LEA receiving school improvement funds under this notice, a list of schools that were served and the amount of funds or value of services each school received. The Department is retaining this language in the final requirements. Also, we agree that posting SEA School Improvement Grant applications on the Department's Web site would provide valuable transparency for this program and we intend to do so. Moreover, because we believe that posting LEA applications would be most useful for this purpose, we are adding language in section II.B.3 of the final requirements, under SEA Responsibilities, to require SEAs to post final LEA applications on their Web sites as well as a summary of those grants that includes the following information: the name and NCES identification number of each LEA awarded a grant; the amount of each LEA's grant; the name and NCES identification number of each school to be served; and the type of intervention to be implemented in each Tier I and

Tier II school. We decline to add a provision requiring SEAs and LEAs to make available ''outputs'' produced through the use of school improvement funds.

Change: New section II.B.3 states that ''[a]n SEA must post on its Web site all final LEA applications for School Improvement Grants as well as a summary of those grants that includes the following information:

(a) Name and NCES identification number of each LEA awarded a grant.

(b) Amount of each LEA's grant.

(c) Name and NCES identification number of each school to be served.

(d) Type of intervention to be implemented in each Tier I and Tier II school.''

Evaluation

Comment: One commenter called for a quantitative and qualitative evaluation of activities funded with School Improvement Grants at the LEA and school levels.

Discussion: The Department currently is developing plans for a comprehensive evaluation of the School Improvement Grants program described in this notice and will provide more information at a later date.

Changes: None.

ED Technical Assistance

Comment: Several commenters recommended that the Department provide technical assistance and support to SEAs in implementing the School Improvement Grants program, including on the criteria SEAs should use to determine if an LEA has the capacity to implement the selected interventions and on best practices for continuing LEA oversight and feedback to schools implementing the school intervention models. One of these commenters pointed out that the Department is in the best position to provide information on what is working well across a broad range of States and LEAs.

Discussion: The Department agrees that it should provide a variety of technical assistance to SEAs implementing the School Improvement Grants program, and intends to do so. As an initial example of such assistance, concurrently with the availability of the SEA application package, we have issued FAQs to help clarify various aspects of the School Improvement Grant program for SEAs, LEAs, and schools.

Changes: None.

Final Requirements: The Secretary issues the following requirements with respect to the allocation and use of School Improvement Grants. The Secretary may use these requirements for any year in which funds are appropriated for School Improvement Grants authorized under section 1003(g) of the ESEA.

As noted earlier, the final requirements with respect to the definitions of *persistently lowest-achieving schools, increased learning time,* and *student growth* as well as the four school intervention models were issued in the State Fiscal Stabilization Funds Notice of Final Requirements, Definitions, and Approval Criteria. They are included verbatim in this notice for the ease of SEAs and LEAs that receive a School Improvement Grant.

I. SEA Priorities in Awarding School Improvement Grants

A. *Defining Key Terms.* To award School Improvement Grants to its LEAs, consistent with section 1003(g)(6) of the ESEA, an SEA must define three tiers of schools, in accordance with the requirements in paragraph 1, to enable the SEA to select those LEAs with the greatest need for such funds. From among the LEAs in greatest need, the SEA must select, in accordance with paragraph 2, those LEAs that demonstrate the strongest commitment to ensuring that the funds are used to provide adequate resources to enable the lowest-achieving schools to meet the accountability requirements in this notice. Accordingly, an SEA must use the following definitions to define key terms:

1. *Greatest need.* An LEA with the greatest need for a School Improvement Grant must have one or more schools in at least one of the following tiers:

(a) *Tier I schools:* A Tier I school is a Title I school in improvement, corrective action, or restructuring that is identified by the SEA under paragraph (a)(1) of the definition of ''persistently lowest-achieving schools.''

(b) *Tier II schools:* A Tier II school is a secondary school that is eligible for, but does not receive, Title I, Part A funds and is identified by the SEA under paragraph (a)(2) of the definition of ''persistently lowest-achieving schools.''

(c) *Tier III schools:* A Tier III school is a Title I school in improvement, corrective action, or restructuring that is not a Tier I school. An SEA may establish additional criteria to use in setting priorities among LEA applications for funding and to encourage LEAs to differentiate among these schools in their use of school improvement funds.

2. *Strongest commitment.* An LEA with the strongest commitment is an LEA that agrees to implement, and demonstrates the capacity to implement fully and effectively, one of the following rigorous interventions in each Tier I and Tier II school that the LEA commits to serve:

(a) *Turnaround model:* (1) A turnaround model is one in which an LEA must—

(i) Replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates;

(ii) Using locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students,

(A) Screen all existing staff and rehire no more than 50 percent; and

(B) Select new staff;

(iii) Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school;

(iv) Provide staff ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

(v) Adopt a new governance structure, which may include, but is not limited to, requiring the school to report to a new ''turnaround office'' in the LEA or SEA, hire a ''turnaround leader'' who reports directly to the Superintendent or Chief Academic Officer, or enter into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability;

(vi) Use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with State academic standards;

(vii) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students;

(viii) Establish schedules and implement strategies that provide increased learning time (as defined in this notice); and

(ix) Provide appropriate social-emotional and community-oriented services and supports for students.

(2) A turnaround model may also implement other strategies such as—

(i) Any of the required and permissible activities under the transformation model; or

(ii) A new school model (*e.g.,* themed, dual language academy).

(b) *Restart model:* A restart model is one in which an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process. (A CMO is a non-profit organization that operates or manages charter schools by centralizing or sharing certain functions and resources among schools. An EMO is a for-profit or non-profit organization that provides ''whole-school operation'' services to an LEA.) A restart model must enroll, within the grades it serves, any former student who wishes to attend the school.

(c) *School closure:* School closure occurs when an LEA closes a school and enrolls the students who attended that school in other schools in the LEA that are higher achieving. These other schools should be within reasonable proximity to the closed school and may include, but are not limited to, charter schools or new schools for which achievement data are not yet available.

(d) *Transformation model:* A transformation model is one in which an LEA implements each of the following strategies:

(1) *Developing and increasing teacher and school leader effectiveness.*

(i) *Required activities.* The LEA must—

(A) Replace the principal who led the school prior to commencement of the transformation model;

(B) Use rigorous, transparent, and equitable evaluation systems for teachers and principals that—

(*1*) Take into account data on student growth (as defined in this notice) as a significant factor as well as other factors such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high school graduations rates; and

(*2*) Are designed and developed with teacher and principal involvement;

(C) Identify and reward school leaders, teachers, and other staff who, in implementing this model, have increased student achievement and high school graduation rates and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so;

(D) Provide staff ongoing, high-quality, job-embedded professional development (*e.g.,* regarding subject-specific pedagogy, instruction that reflects a deeper understanding of the community served by the school, or differentiated instruction) that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies; and

(E) Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in a transformation school.

(ii) *Permissible activities.* An LEA may also implement other strategies to develop teachers' and school leaders' effectiveness, such as—

(A) Providing additional compensation to attract and retain staff with the skills necessary to meet the needs of the students in a transformation school;

(B) Instituting a system for measuring changes in instructional practices resulting from professional development; or

(C) Ensuring that the school is not required to accept a teacher without the mutual consent of the teacher and principal, regardless of the teacher's seniority.

(2) *Comprehensive instructional reform strategies.*

(i) *Required activities.* The LEA must—

(A) Use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with State academic standards; and

(B) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students.

(ii) *Permissible activities.* An LEA may also implement comprehensive instructional reform strategies, such as—

(A) Conducting periodic reviews to ensure that the curriculum is being implemented with fidelity, is having the intended impact on student achievement, and is modified if ineffective;

(B) Implementing a schoolwide ''response-to-intervention'' model;

(C) Providing additional supports and professional development to teachers and principals in order to implement effective strategies to support students with disabilities in the least restrictive environment and to ensure that limited English proficient students acquire language skills to master academic content;

(D) Using and integrating technology-based supports and interventions as part of the instructional program; and

(E) In secondary schools—

(*1*) Increasing rigor by offering opportunities for students to enroll in advanced coursework (such as Advanced Placement; International Baccalaureate; or science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities), early-college high schools, dual enrollment programs, or thematic learning academies that prepare students for college and careers, including by providing appropriate supports designed to ensure that low-achieving students can take advantage of these programs and coursework;

(*2*) Improving student transition from middle to high school through summer transition programs or freshman academies;

(*3*) Increasing graduation rates through, for example, credit-recovery programs, re-engagement strategies, smaller learning communities, competency-based instruction and performance-based assessments, and acceleration of basic reading and mathematics skills; or

(*4*) Establishing early-warning systems to identify students who may be at risk of failing to achieve to high standards or graduate.

(3) *Increasing learning time and creating community-oriented schools.*

(i) *Required activities.* The LEA must—

(*A*) Establish schedules and strategies that provide increased learning time (as defined in this notice); and

(*B*) Provide ongoing mechanisms for family and community engagement.

(ii) *Permissible activities.* An LEA may also implement other strategies that extend learning time and create community-oriented schools, such as—

(A) Partnering with parents and parent organizations, faith- and community-based organizations, health clinics, other State or local agencies, and others to create safe school environments that meet students' social, emotional, and health needs;

(B) Extending or restructuring the school day so as to add time for such strategies as advisory periods that build relationships between students, faculty, and other school staff;

(C) Implementing approaches to improve school climate and discipline, such as implementing a system of positive behavioral supports or taking steps to eliminate bullying and student harassment; or

(D) Expanding the school program to offer full-day kindergarten or pre-kindergarten.

(4) *Providing operational flexibility and sustained support.*

(i) *Required activities.* The LEA must—

(A) Give the school sufficient operational flexibility (such as staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates; and

(B) Ensure that the school receives ongoing, intensive technical assistance and related support from the LEA, the SEA, or a designated external lead partner organization (such as a school turnaround organization or an EMO).

(ii) *Permissible activities.* The LEA may also implement other strategies for providing operational flexibility and intensive support, such as—

(A) Allowing the school to be run under a new governance arrangement, such as a turnaround division within the LEA or SEA; or

(B) Implementing a per-pupil school-based budget formula that is weighted based on student needs.

3. *Definitions.*

Increased learning time means using a longer school day, week, or year schedule to significantly increase the total number of school hours to include additional time for (a) instruction in core academic subjects including English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography; (b) instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations; and (c) teachers to collaborate, plan, and engage in professional development within and across grades and subjects.[5]

Persistently lowest-achieving schools means, as determined by the State—

(a)(1) Any Title I school in improvement, corrective action, or restructuring that—

(i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

(b) To identify the lowest-achieving schools, a State must take into account both—

(i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(ii) The school's lack of progress on those assessments over a number of years in the ''all students'' group.

Student growth means the change in achievement for an individual student between two or more points in time. For grades in which the State administers summative assessments in reading/language arts and mathematics, student growth data must be based on a student's score on the State's assessment under section 1111(b)(3) of the ESEA. A State may also include other measures that are rigorous and comparable across classrooms.

4. *Evidence of strongest commitment.*

(a) In determining the strength of an LEA's commitment to ensuring that school improvement funds are used to provide adequate resources to enable persistently lowest-achieving schools to improve student achievement substantially, an SEA must consider, at a minimum, the extent to which the LEA's application demonstrates that the LEA has taken, or will take, action to—

(i) Analyze the needs of its schools and select an intervention for each school;

(ii) Design and implement interventions consistent with these requirements;

(iii) Recruit, screen, and select external providers, if applicable, to ensure their quality;

(iv) Align other resources with the interventions;

(v) Modify its practices or policies, if necessary, to enable it to implement the interventions fully and effectively; and

(vi) Sustain the reforms after the funding period ends.

(b) The SEA must consider the LEA's capacity to implement the interventions and may approve the LEA to serve only those Tier I and Tier II schools for which the SEA determines that the LEA can implement fully and effectively one of the interventions.

B. *Providing flexibility.*

1. An SEA may award school improvement funds to an LEA for a Tier I or Tier II school that has implemented, in whole or in part, an intervention that meets the requirements under section I.A.2(a), 2(b), or 2(d) of these requirements within the last two years so that the LEA and school can continue or complete the intervention being implemented in that school.

2. An SEA may seek a waiver from the Secretary of the requirements in section 1116(b) of the ESEA in order to permit a Tier I school implementing an intervention that meets the requirements under section I.A.2(a) or 2(b) of these requirements in an LEA that receives a School Improvement Grant to ''start over'' in the school improvement timeline. Even though a school implementing the waiver would no longer be in improvement, corrective action, or restructuring, it may receive school improvement funds.

3. An SEA may seek a waiver from the Secretary to enable a Tier I school that is ineligible to operate a Title I schoolwide program and is operating a Title I targeted assistance program to operate a schoolwide program in order to implement an intervention that meets

[5] Research supports the effectiveness of well-designed programs that expand learning time by a minimum of 300 hours per school year. (See Frazier, Julie A.; Morrison, Frederick J. ''The Influence of Extended-year Schooling on Growth of Achievement and Perceived Competence in Early Elementary School.'' Child Development. Vol. 69 (2), April 1998, pp. 495–497 and research done by Mass2020.) Extending learning into before- and after-school hours can be difficult to implement effectively, but is permissible under this definition with encouragement to closely integrate and coordinate academic work between in school and out of school. (See James-Burdumy, Susanne; Dynarski, Mark; Deke, John. ''When Elementary Schools Stay Open Late: Results from The National Evaluation of the 21st Century Community Learning Centers Program.'' Educational Evaluation and Policy Analysis, Vol. 29 (4), December 2007, Document No. PP07–121.) *http://www.mathematica-mpr.com/publications/redirect_PubsDB.asp?strSite=http://epa.sagepub.com/cgi/content/abstract/29/4/296.*

the requirements under section I.A.2(a), 2(b), or 2(d) of these requirements.

4. An SEA may seek a waiver from the Secretary to enable an LEA to use school improvement funds to serve a Tier II secondary school.

5. An SEA may seek a waiver from the Secretary to extend the period of availability of school improvement funds beyond September 30, 2011 so as to make those funds available to the SEA and its LEAs for up to three years.

6. If an SEA does not seek a waiver under section I.B.2, 3, 4, or 5, an LEA may seek a waiver.

II. Awarding School Improvement Grants to LEAs

A. LEA Requirements

1. An LEA may apply for a School Improvement Grant if it has one or more schools that qualify under the State's definition of a Tier I or Tier III school. An eligible LEA may also apply to serve Tier II schools.

2. In its application, in addition to other information that the SEA may require—

(a) The LEA must—

(i) Identify the Tier I, Tier II, and Tier III schools it commits to serve;

(ii) Identify the intervention it will implement in each Tier I and Tier II school it commits to serve;

(iii) Demonstrate that it has the capacity to use the school improvement funds to provide adequate resources and related support to each Tier I and Tier II school it commits to serve in order to implement fully and effectively one of the four interventions identified in section I.A.2 of these requirements;

(iv) Provide evidence of its strong commitment to use school improvement funds to implement the four interventions by addressing the factors in section I.A.4(a) of these requirements;

(v) Include a timeline delineating the steps the LEA will take to implement the selected intervention in each Tier I and Tier II school identified in the LEA's application; and

(vi) Include a budget indicating how it will allocate school improvement funds among the Tier I, Tier II, and Tier III schools it commits to serve.

(b) If an LEA has nine or more Tier I and Tier II schools, the LEA may not implement the transformation model in more than 50 percent of those schools.

3. The LEA must serve each Tier I school using one of the four interventions identified in section I.A.2 of these requirements unless the LEA demonstrates that it lacks sufficient capacity (which may be due, in part, to serving Tier II schools) to undertake one of these rigorous interventions in each Tier I school, in which case the LEA must indicate the Tier I schools that it can effectively serve. An LEA may not serve with school improvement funds awarded under section 1003(g) of the ESEA a Tier I school in which it does not implement one of the four interventions.

4. The LEA's budget for each Tier I and Tier II school it commits to serve must be of sufficient size and scope to ensure that the LEA can implement one of the rigorous interventions identified in section I.A.2 of these requirements. The LEA's budget must cover the period of availability of the school improvement funds, taking into account any waivers extending the period of availability received by the SEA or LEA. The LEA's budget may, and likely would, exceed $500,000 per year for each Tier I and Tier II school that implements an intervention in section I.A.2(a), 2(b), or 2(d) in order to reform the school consistent with the LEA's application and these requirements. The LEA's budget may include less than $500,000 per year for a Tier I or Tier II school for which it proposes to implement the school closure intervention in section I.A.2(c) (which would typically be completed within one year) or if the LEA's budget shows that less funding is needed to implement its selected intervention fully and effectively.

5. The LEA's budget for each Tier III school it commits to serve must include the services it will provide the school, particularly if the school meets additional criteria established by the SEA, although those services do not need to be commensurate with the funds the SEA provides the LEA based on the school's inclusion in the LEA's School Improvement Grant application.

6. An LEA in which one or more Tier I schools are located and that does not apply to serve at least one of these schools may not apply for a grant to serve only Tier III schools.

7. (a) To monitor each Tier I and Tier II school that receives school improvement funds, an LEA must—

(i) Establish annual goals for student achievement on the State's assessments in both reading/language arts and mathematics; and

(ii) Measure progress on the leading indicators in section III of these requirements.

(b) The LEA must also meet the requirements with respect to adequate yearly progress in section 1111(b)(2) of the ESEA.

8. If an LEA implements a restart model, it must hold the charter school operator, CMO, or EMO accountable for meeting the final requirements.

B. SEA Requirements

1. To receive a School Improvement Grant, an SEA must submit an application to the Department at such time, and containing such information, as the Secretary shall reasonably require.

2. (a) An SEA must review and approve, consistent with these requirements, an application for a School Improvement Grant that it receives from an LEA.

(b) Before approving an LEA's application, the SEA must ensure that the application meets these requirements, particularly with respect to—

(i) Whether the LEA has agreed to implement one of the four interventions identified in section I.A.2 of these requirements in each Tier I and Tier II school included in its application;

(ii) The extent to which the LEA's application shows the LEA's strong commitment to use school improvement funds to implement the four interventions by addressing the factors in section I.A.4(a) of these requirements;

(iii) Whether the LEA has the capacity to implement the selected intervention fully and effectively in each Tier I and Tier II school identified in its application; and

(iv) Whether the LEA has submitted a budget that includes sufficient funds to implement the selected intervention fully and effectively in each Tier I and Tier II school it identifies in its application and whether the budget covers the period of availability of the funds, taking into account any waiver extending the period of availability received by either the SEA or the LEA.

(c) An SEA may, consistent with State law, take over an LEA or specific Tier I or Tier II schools in order to implement the interventions in these requirements.

(d) An SEA may not require an LEA to implement a particular model in one or more schools unless the SEA has taken over the LEA or school.

(e) To the extent that a Tier I or Tier II school implementing a restart model becomes a charter school LEA, an SEA must hold the charter school LEA accountable, or ensure that the charter school authorizer holds it accountable, for complying with the final requirements.

3. An SEA must post on its Web site, within 30 days of awarding School Improvement Grants to LEAs, all final LEA applications as well as a summary of those grants that includes the following information:

(a) Name and National Center for Education Statistics (NCES)

identification number of each LEA awarded a grant.

(b) Amount of each LEA's grant.

(c) Name and NCES identification number of each school to be served.

(d) Type of intervention to be implemented in each Tier I and Tier II school.

4. If an SEA does not have sufficient school improvement funds to award, for up to three years, a grant to each LEA that submits an approvable application, the SEA must first give priority to LEAs that apply to serve both Tier I and Tier II schools and then give priority to LEAs that apply to serve Tier I schools.

5. An SEA must award a School Improvement Grant to an LEA in an amount that is of sufficient size and scope to support the activities required under section 1116 of the ESEA and these requirements. The LEA's total grant may not be less than $50,000 or more than $500,000 per year for each Tier I and Tier III school that the LEA commits to serve.

6. (a) In awarding school improvement funds to an LEA, an SEA must allocate $500,000 per year for each Tier I school that will implement a rigorous intervention under section I.A.2(a), 2(b), or 2(d) for which the LEA has requested funds in its budget and for which the SEA determines the LEA has the capacity to serve, unless the SEA determines on a case-by-case basis, considering such factors as school size, the intervention selected, and other relevant circumstances, that less funding is needed to implement the intervention fully and effectively.

(b) The SEA must allocate sufficient school improvement funds in total to the LEA, consistent with section 1003(g)(5) of the ESEA, to meet, as closely as possible, the LEA's budget for implementing one of the four interventions in each Tier I and Tier II school it commits to serve, including the costs associated with closing such schools under section I.A.2(c), as well as the costs for serving participating Tier III schools, particularly those meeting additional criteria established by the SEA.

7. If an SEA does not have sufficient school improvement funds to allocate to each LEA with a Tier I or Tier II school an amount sufficient to enable the school to implement fully and effectively the specified intervention throughout the period of availability, including any extension afforded through a waiver, the SEA may take into account the distribution of Tier I and Tier II schools among such LEAs in the State to ensure that Tier I and Tier II schools throughout the State can be served.

8. If an SEA has provided a School Improvement Grant to each LEA that has requested funds to serve a Tier I or Tier II school in accordance with these requirements, the SEA may award remaining school improvement funds to an LEA that seeks to serve only Tier III schools that applies to receive those funds.

9. In awarding School Improvement Grants, an SEA must apportion its school improvement funds in order to make grants to LEAs, as applicable, that are renewable for the length of the period of availability of the funds, taking into account any waivers that may have been requested and received by the SEA or an individual LEA to extend the period of availability.

10. (a) If not every Tier I school in a State is served with FY 2009 school improvement funds, an SEA must carry over 25 percent of its FY 2009 funds, combine those funds with FY 2010 school improvement funds (depending on the availability of appropriations), and award those funds to eligible LEAs consistent with these requirements. This requirement does not apply in a State that does not have sufficient school improvement funds to serve all the Tier I schools in the State.

(b) If each Tier I school in a State is served with FY 2009 school improvement funds, an SEA may reserve up to 25 percent of its FY 2009 allocation and award those funds in combination with its FY 2010 funds (depending on the availability of appropriations) consistent with these requirements.

11. In identifying Tier I and Tier II schools in a State for purposes of allocating funds appropriated for School Improvement Grants under section 1003(g) of the ESEA for any year subsequent to FY 2009, an SEA must exclude from consideration any school that was previously identified as a Tier I or Tier II school and in which an LEA is implementing one of the four interventions identified in these requirements using funds made available under section 1003(g) of the ESEA.

12. An SEA that is participating in the ''differentiated accountability pilot'' must ensure that its LEAs use school improvement funds available under section 1003(g) of the ESEA in a Tier I or Tier II school consistent with these requirements.

13. Before submitting its application for a School Improvement Grant to the Department, the SEA must consult with its Committee of Practitioners established under section 1903(b) of the ESEA regarding the rules and policies contained therein and may consult with other stakeholders that have an interest in its application.

C. Renewal for Additional One-Year Periods

(a) If an SEA or an individual LEA requests and receives a waiver of the period of availability of school improvement funds, an SEA—

(i) Must renew the School Improvement Grant for each affected LEA for additional one-year periods commensurate with the period of availability if the LEA demonstrates that its Tier I and Tier II schools are meeting the requirements in section II.A.7 and that its Tier III schools are meeting the goals in their plans developed under section 1116 of the ESEA; and

(ii) May renew an LEA's School Improvement Grant if the SEA determines that the LEA is making progress toward meeting the requirements in section II.A.7.

(b) If an SEA does not renew an LEA's School Improvement Grant because the LEA's participating schools are not meeting the requirements in section II.A.7, the SEA may reallocate those funds to other eligible LEAs, consistent with these requirements.

D. State Reservation for Administration, Evaluation, and Technical Assistance

An SEA may reserve from the school improvement funds it receives under section 1003(g) of the ESEA in any given year no more than five percent for administration, evaluation, and technical assistance expenses. An SEA must describe in its application for a School Improvement Grant how the SEA will use these funds.

E. A State Whose School Improvement Grant Exceeds the Amount the State May Award to Eligible LEAs

In some States in which a limited number of Title I schools are identified for improvement, corrective action, or restructuring, the SEA may be able to make School Improvement Grants, renewable for additional years commensurate with the period of availability of the funds, to each LEA with a Tier I, Tier II, or Tier III school without using the State's full allocation under section 1003(g) of the ESEA. An SEA in this situation may reserve no more than five percent of its FY 2009 allocation of school improvement funds for administration, evaluation, and technical assistance expenses under section 1003(g)(8) of the ESEA. The SEA may retain sufficient school improvement funds to serve, for succeeding years, each Tier I, II, and III school that generates funds for an eligible LEA. The Secretary may

reallocate to other States any remaining school improvement funds from States with surplus funds.

III. Reporting and Evaluation

A. Reporting Metrics

To inform and evaluate the effectiveness of the interventions identified in these requirements, the Secretary will collect data on the metrics in the following chart. The Department already collects most of these data through ED*Facts* and will collect data on two metrics through SFSF reporting. Accordingly, an SEA must only report the following new data with respect to school improvement funds:

1. A list of the LEAs, including their NCES identification numbers, that received a School Improvement Grant under section 1003(g) of the ESEA and the amount of the grant.

2. For each LEA that received a School Improvement Grant, a list of the schools that were served, their NCES identification numbers, and the amount of funds or value of services each school received.

3. For any Tier I or Tier II school, school-level data on the metrics designated on the following chart as ''SIG'' (School Improvement Grant):

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Metric	Source	Achievement Indicators	Leading Indicators
SCHOOL DATA			
Which intervention the school used (i.e., turnaround, restart, closure, or transformation)	**NEW SIG**		
AYP status	EDFacts	✓	
Which AYP targets the school met and missed	EDFacts	✓	
School improvement status	EDFacts	✓	
Number of minutes within the school year	**NEW SIG**		✓
STUDENT OUTCOME/ACADEMIC PROGRESS DATA			
Percentage of students at or above each proficiency level on State assessments in reading/language arts and mathematics (e.g., Basic, Proficient, Advanced), by grade and by student subgroup	EDFacts	✓	
Student participation rate on State assessments in reading/language arts and in mathematics, by student subgroup	EDFacts		✓
Average scale scores on State assessments in reading/language arts and in mathematics, by grade, for the "all students" group, for each achievement quartile, and for each subgroup	**NEW SIG**	✓	
Percentage of limited English proficient students who attain English language proficiency	EDFacts	✓	
Graduation rate	EDFacts	✓	
Dropout rate	EDFacts		✓
Student attendance rate	EDFacts		✓
Number and percentage of students completing advanced coursework (e.g., AP/IB), early-college high schools, or dual enrollment classes	**NEW SIG HS only**		✓
College enrollment rates	NEW	✓	

Metric	Source	Achievement Indicators	Leading Indicators
	SFSF Phase II HS only		
STUDENT CONNECTION AND SCHOOL CLIMATE			
Discipline incidents	EDFacts		✓
Truants	EDFacts		✓
TALENT			
Distribution of teachers by performance level on LEA's teacher evaluation system	NEW SFSF Phase II		✓
Teacher attendance rate	**NEW SIG**		✓

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4. An SEA must report these metrics for the school year prior to implementing the intervention, if the data are available, to serve as a baseline, and for each year thereafter for which the SEA allocates school improvement funds under section 1003(g) of the ESEA. With respect to a school that is closed, the SEA need report only the identity of the school and the intervention taken—*i.e.*, school closure.

B. Evaluation

An LEA that receives a School Improvement Grant must participate in any evaluation of that grant conducted by the Secretary.

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive order and to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments, or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Secretary has determined that this regulatory action is significant under section 3(f)(1) of the Executive order.

Potential Costs and Benefits

The potential costs have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Department has assessed the potential costs and benefits of this regulatory action.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final requirements, the Department has determined that the benefits of the requirements exceed the costs. The Department also has determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The Department believes that the requirements will not impose significant costs on States, LEAs, or other entities that receive school improvement funds. As noted elsewhere, these requirements will drive school improvement funds to LEAs that have persistently lowest-achieving schools in amounts sufficient to turn those schools around and significantly increase student achievement. They will also require participating LEAs to adopt the most effective approaches to turning around persistently lowest-achieving schools. In short, the Department believes that the requirements will ensure that limited school improvement funds are put to their optimum use—that is, that they will be targeted to where they are most needed and used in the most effective manner possible. The benefits, then, will be more effective schools serving children from low-income families and a better education for those children.

General Discussion of Comments

Two commenters claimed that implementing School Improvement Grants will be more costly to States than suggested by the NPR, primarily because the NPR cost/benefit analysis focused on the preparation of SEA applications rather than on implementation costs such as those for technical assistance and the monitoring of LEAs. One commenter cited these and other costs in recommending that the Department use its authority under section 1552 of the ARRA to raise the administrative cap on school improvement funds as well as the administrative cap on section 1003(a) school improvement funds (*i.e.*, the four-percent reservation from Title I, Part A formula grant allocations). Another commenter focused on LEA implementation costs, particularly the need to hire additional staff. This commenter expressed concern that LEAs would be forced to turn to ''expensive consultants,'' recommending instead that the Department (1) cap expenditures of school improvement funds for technical assistance providers to encourage such providers to lower their rates, and (2) provide specific funding for LEAs to hire additional staff to implement the interventions.

Although the Department understands there will be costs to SEAs and LEAs associated with implementing School Improvement Grants, we strongly believe that the benefits of these requirements to the public outweigh the implementation costs. The Department

believes that the State and local costs of implementing the requirements (including State costs of applying for grants, distributing the grants to LEAs, ensuring compliance with the requirements, and reporting to the Department, and LEA costs of applying for subgrants and implementing the interventions) will be financed through the grant funds. The Department does not believe that the requirements will impose a financial burden that SEAs and LEAs will have to meet from non-Federal sources.

SEAs will have significantly more resources to carry out their administrative and technical assistance responsibilities as the State share of school improvement funds is calculated off a base of almost $3.5 billion, a 662 percent increase over the amount an SEA could retain for administration and technical assistance activities in FY 2008. Moreover, as noted earlier in this notice, the Secretary is allocating to SEAs their share of school improvement funds at the same time this notice is being published so that SEAs may access those resources to support State-level preparation activities and technical assistance to LEAs (particularly LEAs with potential Tier I and Tier II schools) in order to move quickly with implementation once an SEA's application is approved. Further, as also mentioned earlier in this notice, the Secretary has used his authority under section 1552 of the ARRA to adjust the statutory caps on State administration under Title I, Part A of the ESEA to allow an SEA to reserve additional State administrative funds to help defray costs associated with data collections that are specifically related to ARRA funding for Title I programs, including school improvement data collection and reporting requirements.

With regard to LEA costs, we intend to issue FAQs to accompany the SEA application package that will address the authority of an LEA to hire additional staff, such as a turnaround specialist, to implement, for example, the turnaround model in a Tier I or Tier II school.

Need for Federal Regulatory Action

These final requirements are needed to implement the School Improvement Grants program in FY 2009 in a manner that the Department believes will best enable the program to achieve its objective of supporting comprehensive and effective efforts by LEAs to overcome the challenges faced by the State's persistently lowest-achieving schools that educate concentrations of children living in poverty. The final requirements for an SEA to target school improvement funds on schools that are among the persistently lowest-achieving in the State will ensure that limited Federal funds go to the schools in which they are most needed, including high schools with high dropout rates. The requirement for LEAs receiving school improvement funds to implement one of four specific interventions in certain schools will ensure that those funds are not used for activities that are unlikely to produce the improvement in outcomes that persistently lowest-achieving schools need to achieve.

The reporting requirements included in this notice will ensure that the Department receives limited but essential data on the results of this major Federal investment in school improvement. The Department does not believe that the State and local costs of providing those data will be significant and, as noted earlier, those costs can be met with grant funds.

The definitions will give clearer meaning to some of the terms used elsewhere in the notice.

Regulatory Alternatives Considered

A likely alternative to promulgation of these final requirements would have been for the Secretary to allocate the FY 2009 school improvement funds without setting any regulatory requirements governing their use. Under such an alternative, States and LEAs would have been required to meet the statutory requirements, but funds likely would not have been targeted to the persistently lowest-achieving schools and LEAs would likely not have used all the funds for activities most likely to result in a meaningful reform of those schools and significant improvement in the educational outcomes for the students they educate.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final requirements. This table provides our best estimate of the Federal payments to be made to States under this program as a result of these final requirements. Expenditures are classified as transfers to States.

TABLE—ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers
Annual Monetized Transfers.	$3,545,633,000.
From Whom to Whom	Federal Government to States.

As previously noted, the ARRA provides $3 billion for School Improvement Grants in FY 2009 in addition to the previously appropriated $546 million. The final requirements in this notice govern the total $3.546 billion in FY 2009 school improvement funds.

The requirements will have a distributional impact on the allocation of school improvement funds nationally. The implementation of these requirements will likely result in a larger proportion of program funds flowing to LEAs that have larger concentrations of persistently lowest-achieving schools (Tier I and Tier II schools) and a smaller portion flowing to other LEAs. However, because the FY 2009 appropriation for the program is much larger than the appropriation for FY 2008, the negative impact on the latter category of LEAs may be minimal. The Department is unable to project the amount of the shift but will collect data on the allocations through the procedures described under Reporting and Evaluation.

Regulatory Flexibility Act Certification

The Secretary certifies that these final requirements will not have a significant economic impact on a substantial number of small entities. Under the U.S. Small Business Administration's Size Standards, small entities include small governmental jurisdictions such as cities, towns, or LEAs with a population of less than 50,000. Approximately 11,900 LEAs that receive Title I funds qualify as small entities under this definition. However, the small entities that these final requirements will affect are small LEAs receiving school improvement funds under section 1003(g) of the ESEA—*i.e.*, a small LEA that has one or more schools in improvement, corrective action, or restructuring and that meets the SEA's priorities for greatest need for those funds and demonstrates the strongest commitment to use the funds to provide adequate resources to persistently lowest-achieving schools to raise substantially the achievement of their students.

Preliminary data analyses by the Department suggest that 15 to 25

percent of the persistently lowest-achieving schools in the Nation are located in rural areas, which are likely to contain most of the targeted schools that are operated by small LEAs. Assuming a maximum of 1,000 such schools nationwide, and that few if any rural LEAs will contain more than one of their State's persistently lowest-achieving schools, there would be a range of 150 to 250 small LEAs affected by the final requirements in this notice, including a limited number of small suburban and urban LEAs.

The final requirements in this notice would not have a significant economic impact on these small LEAs because (1) the costs of implementing the required interventions would be covered by the grants received by successful applicants, and (2) in most cases, the costs of developing plans for the interventions and submitting applications would not be significantly higher than the costs that would be incurred in applying for School Improvement Grants under the statutory requirements.

Successful LEAs will receive up to three years of funding under section 1003(g) of the ESEA to implement their selected interventions, consistent with the Secretary's intention that SEAs ensure that awards are of sufficient size and duration to turn around the Nation's persistently lowest-achieving schools.

Small LEAs may incur costs to develop and submit plans for implementing interventions in persistently lowest-achieving schools but, in general, such costs would be similar to those incurred in applying for School Improvement Grant funding under existing statutory requirements. Moreover, since nearly all of the schools included in the applications submitted by small LEAs would be schools that already are in improvement status, these LEAs would be able to incorporate existing data analysis and planning into their applications, at little additional cost. Also, small LEAs may receive technical assistance and other support from their SEAs in developing turnaround plans and applications for these funds.

In addition, the Department believes the benefits provided under this regulatory action will outweigh the burdens on these small LEAs of complying with the final requirements. In particular, the requirements potentially make available to eligible small LEAs significant resources to make the fundamental changes needed to turn around a persistently lowest-achieving school, resources that otherwise may not be available to small and often geographically isolated LEAs.

Paperwork Reduction Act of 1995

This notice contains information collection requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Department has received emergency approval for the information collections described below under OMB Control Number 1810–0682.

A description of the specific information collection requirements is provided in the following tables along with estimates of the annual recordkeeping burden for these requirements. The estimates include time for an SEA and an LEA to prepare their respective applications (including requests for waivers), an SEA to review an LEA's application, and an LEA to report data to an SEA and the SEA to report those data to the Department. The first table shows the estimated burden for SEAs and the second table shows the estimated burden for LEAs.

STATE EDUCATIONAL AGENCY ESTIMATE

SIG activity	Number of SEAs	Hours/activity	Hours	Cost/hour	Cost
Complete SEA application (including requests for waivers)	52	100	5,200	$30	$156,000
Review and post LEA applications	52	800	41,600	30	1,248,000
Collect and report school-level data to the Department*	52	80	4,160	30	124,800
Total			50,960	30	1,528,800

* These are data the Department does not currently collect through ED*Facts.*

LOCAL EDUCATIONAL AGENCY ESTIMATE

SIG activity	Number of LEAs	Hours/activity	Hours	Cost/hour	Cost
Complete LEA application (including requests for waivers if the SEA does not so request)	2,550	60	153,000	$25	$3,825,000
Report data to SEA*	1,000	40	40,000	25	1,000,000
Total			193,000	25	4,825,000

* These are data the Department does not currently collect through ED*Facts.*

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Dated: December 2, 2009.

Arne Duncan,

Secretary of Education.

[FR Doc. E9–29183 Filed 12–9–09; 8:45 am]

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Part IV

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 772 and 774

Implementation of the Wassenaar Arrangement's (WA) Task Force on Editorial Issues (TFEI) Revisions; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 772 and 774

[Docket No. 0908271249–91275–01]

RIN 0694–AE71

Implementation of the Wassenaar Arrangement's (WA) Task Force on Editorial Issues (TFEI) Revisions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Wassenaar Arrangement (WA) Task Force on Editorial Issues (TFEI) made revisions, editorial in nature, to clarify, remove extraneous text or correct text that appears in Export Control Classification Numbers (ECCNs) on the Commerce Control List of the Export Administration Regulations. The TFEI revisions (over 2,000) were agreed upon by the WA in December 2007. The WA implementation rules for 2007 and 2008 contain only the TFEI revisions that coincided with the revisions to ECCNs affected by the 2007 and 2008 WA agreements. This rule implements the remaining TFEI revisions.

DATES: *Effective Dates:* This rule is effective: December 10, 2009.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Office of Exporter Services, Regulatory Policy Division 202–482–2440, *scook@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Task Force on Editorial Issues (TFEI)

The Wassenaar Arrangement Task Force on Editorial Issues (TFEI) made revisions, editorial in nature, to clarify, remove extraneous text or correct text that appears in the Wassenaar Dual-Use List. This was assigned to the TFEI by the Wassenaar Arrangement in order to bring the Wassenaar Dual-Use List into conformity with TFEI guidelines. The TFEI revisions (over 2,000) were agreed upon by the WA in December 2007. Some of these revisions were made on October 14, 2008 (73 FR 60910) in the rule entitled ''Wassenaar Arrangement Plenary Agreements Implementation: December 2007 Categories 1, 2, 3, 5 Parts I and II, 6, 7, and 9 of the Commerce Control List, Definitions; December 2006 Solar Cells.'' More of these revisions are made in the rule entitled ''Wassenaar Arrangement 2008 Plenary Agreements Implementation: Categories 1, 2, 3, 4, 5 Parts I and II, 6, 7, 8 and 9 of the Commerce Control List, Definitions, Reports.'' This rule implements the remaining TFEI revisions not included in either of the aforementioned rules.

Revisions to the Commerce Control List

This rule revises a number of entries on the Commerce Control List (CCL) to implement the 2007 and 2008 WA TFEI agreed revisions to the Wassenaar List of Dual Use Goods and Technologies. As described below, the amendments apply to ECCNs 1A001, 1B001, 1C001, 1C002,1C003, 1C004, 1C005, 1C007, 1C009, 1C011, 1C012, 2A001, 2B001, 2B004, 2B005, 2B009, 2E003, 3A002, 3B002, 3C001, 3C003, 3D002, 3D003, 3D004, 3E002, 3E003, 4A001, 4A003, 4A004, 6A007, 6B004, 6B008, 6C002, 6C004, 6C005, 6E003, 7A001, 7A002, 7A004, 7A006, 7A008, 7B001, 7B002, 7D002, 7D003, 7E001, 7E003, 7E004, 8B001, 8C001, 8D001, 8E001, 8E002, 9A001, 9A002, 9A003, 9A005, 9A006, 9A010, 9A011, 9B001, 9B002, 9B003, 9B004, 9B005, 9B007, 9B009, 9B010, 9D001, 9D003, 9D004, 9E001, and 9E003.

Category 1 Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and Toxins

ECCN 1A001 is amended by:

a. Adding two commas to 1A001.a to clarify that the modifiers in the sentence apply to each of the listed items;

b. Adding two commas to 1A001.b to clarify that the modifiers in the sentence apply to each of the listed items; and

c. Adding a comma to 1A001.c to clarify that the modifier in the sentence applies to each of the listed items.

ECCN 1B001 is amended by:

a. Adding a comma to the Heading to clarify that the modifier applies to each item listed before it;

b. Adding a comma in 1B001.a, .b, and .c to clarify that the modifier applies to each item listed before it; and

c. Adding two commas in 1B001.d.2 to clarify that the modifier applies to each item listed before it.

ECCN 1C001 is amended by:

a. Removing the word ''characteristics'' from Note 1.c because it was unnecessary;

b. Adding the phrase ''all of the following'' to Note 1.d to clarify that all the parameters of the subparagraphs apply; and

c. Adding single quotes around the two terms in 1C001.c and the Technical Note that follows 1C001.c.5 to indicate these terms are defined in this entry.

ECCN 1C002 is amended by:

a. Replacing the word ''or'' with ''and'' in the Note to harmonize with the WA text;

b. Adding a comma in the Note to clarify that the modifier applies to each of the items before it;

c. Adding single quotes around two terms in the Technical Notes to indicate that these terms are defined in the entry;

d. Replacing words ''percent'' with ''% by'' in 1C002.a.1 and a.2 to clarify the meaning of the text;

e. Replacing ''with'' with ''having any of the following'' for clarity of meaning in 1C002.b.1, b.2, and b.3;

f. Adding single quotes around terms in 1C002.b.1, b.2, and b.3 to indicate that these terms are defined in the entry;

g. Replacing ''with a tensile strength of:'' with ''having any of the following'' in 1C002.b.4, because we moved ''tensile strength'' into the subparagraphs for clarity;

h. Replacing ''with a tensile strength of:'' with ''having all of the following'' in 1C002.b.5 to clarify the text;

i. Removing the word ''characteristics'' in 1C002.c, because it was superfluous;

j. Removing the word ''and'' from 1C002.c.1.e because it was superfluous;

k. Adding an ''and'' in 1C002.c.2.g to conform to the WA text;

l. Adding paragraph 1C002.c.3 to conform to the WA text;

m. Removing the term ''characteristics'' in 1C002.d because it is superfluous; and

n. Replacing ''in'' with ''by'' in 1C002.d.1 to conform to WA text.

ECCN 1C003 is amended by:

a. Replacing the word ''characteristics'' with ''following'' in the Heading for clarity;

b. Removing the superfluous word ''characteristics'' in 1C003.b and .c, and removing a superfluous comma in 1C003.b;

c. Adding single quotes around 'nanocrystalline' in 1C003.c and the Technical Note to indicate that this term is defined in this entry; and

d. Replacing the word ''percent'' with the percent symbol in 1C003.c.1 for clarity.

ECCN 1C004 is amended by replacing the word ''characteristics'' with ''following'' in the Heading to clarify the text.

ECCN 1C005 is amended by adding single quotes around the term 'filaments' in 1C005.a, .b, .c, and the Technical Note to indicate that the term is defined in this entry.

ECCN 1C006 is amended by:

a. Removing the phrase ''compounds or materials'' from 1C006.a, .b and .c because it was superfluous;

b. Adding single quotes around the term 'silahydrocarbon oils' in 1C006.a.1 and Technical Note to indicate that this term is defined in the entry;

c. Adding single quotes around multiple terms in 1C006.a to indicate that these terms are defined in this entry;

d. Moving a Technical Note from after 1C006.d to 1C006.a to place it closer in location to where the terms are used in this entry;

e. Adding a comma in 1C006.c to clarify that the modifier applies to both the listed items before it;

f. Removing a comma in 1C006.d to correct the punctuation; and

g. Removing the word ''characteristics'' from 1C006.d because it was superfluous.

ECCN 1C007 is amended by adding a comma to 1C007.a to indicate that the modifier applies to all the items before it.

ECCN 1C009 is amended by deleting a superfluous comma in the Heading.

ECCN 1C011 is amended by:

a. Replacing the words ''of these'' with ''thereof'' in 1C011.a to clarify the text; and

b. Revising the identical Notes after 1C011.a and .b by adding the phrase ''also refer to'', removing the phrase ''are controlled whether or not the'' and the word ''are'' to clarify the text.

ECCN 1C012 is amended by re-indexing the Note 1C012.a, and adding double quotes around the term ''previously separated'' in 1C012.b to indicate that it is defined in Part 772.

Category 2 Materials Processing

ECCN 2A001 is amended by:

a. Removing the redundant Note at the beginning of the Items paragraph in the List of Items Controlled section, and replacing ''tolerance'' with ''tolerances'' to correct the grammar in the Note; and

b. Adding commas to indicate the modifiers apply to each item listed before it in 2A001.a and .b.

ECCN 2B001 is amended by removing a superfluous comma in the Note following 2B001.c.

ECCN 2B004 is amended by:

a. Removing a comma from the Heading to correct the punctuation; and

b. Adding the word ''Having'' in 2B004.b to harmonize with WA text.

ECCN 2B005 is amended by:

a. Adding a comma to Note 1 of the Related Controls paragraph of the List of Items Controlled section;

b. Adding the word ''A'' to 2B005.a.1 to clarify the text;

c. Adding the word ''Having'' to 2B005.a.2 to clarify the text;

d. Adding the missing word ''deposition'', and replacing a comma with the word ''and'' in 2B005.c to conform to the WA text;

e. Removing the word ''characteristics'' in 2B005.d, because it is superfluous; and

f. Adding the missing word ''production'' in 2B005.f to conform to the WA text.

ECCN 2B009 is amended by moving a phrase from the middle of the sentence to the beginning to clarify the text of the Technical Note following 2B009.b.

ECCN 2E003 is amended by:

a. Removing single quotes and replacing upper case with lower case letter in the phrase ''Resultant Coating'' in the Nota Bene after 2E003.f, because it was not a defined term in this entry; and

b. Removing the capitalization from the phrase 'coating process' in the Nota Bene after 2E003.f to correct the capitalization.

Notes to Table on Deposition Techniques in Category 2 are amended by:

a. In Note 5, replacing the word ''percent'' with the percent symbol in multiple places;

b. Replacing ''this category'' with ''Category 2'' in Note 10 to conform to the WA text; and

c. Adding two commas and an ''or'' to Note 17 to conform to the WA text.

Category 3 Electronics

ECCN 3A002 is amended by replacing the word ''includes'' with ''include'' in Note 1 that follows 3A002.d.4 to correct the grammar.

ECCN 3B002 is amended by removing commas to correct the punctuation in the Heading.

ECCN 3C001 is amended by:

a. Removing the definition in the Related Definitions paragraph of the List of Items Controlled section, because this term is defined in Part 772;

b. Adding chemical symbols in 3C001.a, .b, and .c for clarity; and

c. Adding double quotes around the term ''III/V compounds'' in 3C001.d to indicate that this term is defined in Part 772.

ECCN 3C003 is amended by:

a. Removing a comma in the Heading to correct the punctuation; and

b. Adding a comma in 3C003.a and .b to indicate that the modifier applies to each item listed before it.

ECCN 3D002 is amended by removing the subparagraphs in the Items paragraph of the List of Items Controlled and adding them to the Heading.

ECCN 3D003 is amended by adding single quotes around the term 'Physics-based' in the Heading to indicate that the term is defined in the entry.

ECCN 3D004 is amended by removing the superfluous word ''the'' from the Heading.

ECCN 3E002 is amended by:

a. Adding single quotes around the term 'vector processor unit' in 3E002.a and the Technical Note, as well as changing the word ''processing'' to read ''processor'' in the Technical Note;

b. Adding double quotes around the term ''signal processing'' in 3E002.c to indicate that this term is defined in Part 772; and

c. Adding double quotes around the term ''technology'' in the Note to 3E002.c to indicate that this term is defined in Part 772.

ECCN 3E003 is amended by:

a. Revising the Heading to conform to WA text; and

b. Adding double quotes around the term ''technology'' in the Note to 3E003.b to indicate that this term is defined in Part 772.

Category 4 Computers

ECCN 4A001 is amended by:

a. Revising the Heading to conform to WA text;

b. Replacing the word ''either'' to read ''any'' in 4A001.a to conform to WA text;

c. Removing the superfluous word ''characteristics'' in 4A001.a; and

d. Adding the word ''or'' to 4A001.a.1 to conform with WA text.

ECCN 4A003 is amended by:

a. Removing a comma in the Heading to correct the punctuation;

b. Replacing the alphabetic indexing with hyphens in Note 1;

c. Adding single quotes around the term 'vector processors' and adding a parenthetical statement to indicate the location of the definition; and

d. Replacing double quotes with single quotes around the terms 'Adjusted Peak Performance' and 'APP' in 4A003.b and .c to indicate that this term is defined in the Technical Note on the 'Adjusted Peak Performance' located at the end of Category 4.

ECCN 4A004 is amended by removing the comma in the Heading to correct the punctuation.

Technical Note on ''Adjusted Peak Performance'' (''APP'') is amended by adding double quotes around the abbreviation ''APP'' throughout the Technical Note, and replacing the double quotes with single quotes around the term 'vector processor(s)' in Notes 4 and 7.

Category 6 Sensors

ECCN 6A007 is amended by:

a. Adding the word ''and'' in 6A007.a and .b to conform to WA text; and

b. Removing the phrase ''for ground, marine, submersible, space or airborne use,'' from 6A007.b to conform to the WA text.

ECCN 6B004 is amended by removing a superfluous comma in the Heading to correct the punctuation.

ECCN 6B008 is amended by adding a comma to the Heading to correct the punctuation.

ECCN 6C002 is amended by:

a. Removing a superfluous comma in the Heading to correct the punctuation; and

b. Adding single quotes around the term ''mole fraction'' in 6C002.b.1 and the Technical Note that follows to indicate that this term is defined in the entry.

ECCN 6C004 is amended by:

a. Removing a superfluous commas in Heading;

b. Replacing a comma with the word ''and'' in 6C004.a and .e to conform to the WA text;

c. Replacing ''having'' with ''and'' in 6C004.a.2;

d. Adding the phrase ''any of'' in 6C004.b to conform to WA text; and

e. Adding an ''or'' in 6C004.b.2 to conform to the WA text.

ECCN 6C005 is amended by removing a superfluous comma in the Heading to correct the punctuation.

ECCN 6E003 is amended by:

a. Removing a superfluous commas in the Heading and 6E003.d to correct the punctuation;

b. Moving the word ''optics'' from inclusion in 6D003.d to above 6D003.d to read ''Optics'' in order to create a section heading within the list; and

c. Adding a comma in 6E003.d.1 to correct the punctuation.

Category 7 Navigation and Avionics

ECCN 7A001 is amended by:

a. Removing superfluous commas from the Heading and 7A001.a.1 and a.2;

b. Replacing a period with a semi-colon in 7A001.a.3 to correct the punctuation; and

c. Adding a comma in 7A001.b to correct punctuation.

ECCN 7A002 is amended by:

a. Removing a superfluous comma and the word ''characteristics'' from the Heading to conform with WA text;

b. Adding single quotes around the phrase 'spinning mass gyros' in the Note that follows 7A002.b to indicate that the term is defined in the entry; and

c. Moving the parenthetical phrase from the Note after 7A002.b into a new Technical Note to conform with the WA text.

ECCN 7A004 is amended by removing a superfluous comma from the Heading to correct the punctuation.

ECCN 7A006 is amended by replacing a comma with the word ''and'' and removing the word ''characteristics'' in the Heading to conform to the WA text.

ECCN 7A008 is amended by replacing a comma with the word ''and'' and removing two commas in the Heading to correct the grammar.

ECCN 7B001 is amended by:

a. Adding a comma to the Heading to correct the punctuation;

b. Adding single quotes to the terms 'Maintenance Level I' and 'Maintenance Level II' in the Related Controls and Related Definitions paragraphs of the List of Items Controlled section because those terms are defined in the entry; and

c. Adding capitalization to ''Line Replaceable Unit'' and ''Shop Replaceable Assembly'' in the Related Definitions paragraph of the List of Items Controlled section to conform with the WA text.

ECCN 7B002 is amended by moving the phrase ''as follows (*see* List of Items Controlled)'' to the end of the Heading and removing a superfluous comma to correct the punctuation.

ECCN 7D002 is amended by:

a. Adding a comma and removing the parenthetical to the Heading to conform with WA text;

b. Adding single quotes around the term 'AHRS' in the Heading and in the Related Controls and Related Definitions paragraphs in the List of Items Controlled section to indicate that this term is defined in this entry; and

c. Capitalizing ''Inertial Navigation Systems'' in the Related Definitions paragraph of the List of Items Controlled section to conform to WA text.

ECCN 7D003 is amended by:

a. Removing a superfluous comma from the Heading to correct the punctuation;

b. Replacing the word ''that'' with ''which'' in 7D003.b and .c to conform to WA text;

c. Capitalizing the term ''Computer-Aided-Design'' in 7D003.e to conform to WA text; and

d. Adding a comma in 7D003.e to correct the punctuation.

ECCN 7E001 is amended by adding a comma in the Heading to correct the punctuation.

ECCN 7E003 is amended by clarifying the text in the Related Definitions section of the List of Items Controlled section.

ECCN 7E004 is amended by:

a. Removing a superfluous comma from the Heading to correct the punctuation;

b. Adding the phrase ''any of the following'' to 7E004.a to conform with the WA text;

c. Replacing the word ''that'' with ''which'' in 7E004.a.2 and c.1 to conform to the WA text;

d. Adding commas to 7E004.a.3, a.4, a.7, b.5, Note to 7E004.b.5, b.6, c.1, and c.3 to correct the punctuation; and

e. Adding the word ''or'' to 7E004.a.6 to conform with WA text.

Category 8 Marine

ECCN 8B001 is amended by removing a comma and replacing a comma with the word ''and'' in the Heading to conform with WA text.

ECCN 8C001 is amended by:

a. Adding single quotes around 'syntactic foam' in the Heading and in the Related Definitions paragraph in the List of Items Controlled section, to indicate that the term is defined in the entry; and

b. Replacing a comma with the word ''and'' in the Heading to conform with WA text.

ECCN 8D001 is amended by adding a comma in the Heading to correct the punctuation.

ECCN 8E001 is amended by adding a comma in the Heading to correct the punctuation.

ECCN 8E002 is amended by removing a superfluous comma from Heading to correct the punctuation.

Category 9 Propulsion Systems, Space Vehicles and Related Equipment

Product Group A is amended by revising the Nota Bene that appears at the beginning by adding the missing word ''radiation'' to conform with the WA text.

ECCN 9A001 is amended by:

a. Re-indexing the Note that follows 9A001.a to conform to the WA text;

b. Replacing a period with a colon in what is now paragraph b of Note to 9A001.a to correct the punctuation;

c. Removing capitalization on ''type certificate'' in paragraph b.1 of Note to 9A001.a to conform with WA text; and

d. Adding a comma in 9A001.b to correct the punctuation.

ECCN 9A002 is amended by adding single quotes around the term 'Marine gas turbine engines' in the Heading and replacing double quotes with single quotes around the same term in the Related Definitions paragraph of the List of Items Controlled section to conform with the WA text.

ECCN 9A003 is amended by:

a. Replacing the phrase '', as follows'' with ''and having any of the following'' in the Heading to conform with WA text; and

b. Adding the word ''or'' in 9A003.a to conform to WA text.

ECCN 9A005 is amended by adding a comma to the Heading to correct the punctuation.

ECCN 9A006 is amended by adding a comma to the Heading to correct the punctuation.

ECCN 9A010 is amended by adding a comma to the Heading to conform with WA text.

ECCN 9A011 is amended by adding a comma to the Heading to conform with WA text.

ECCN 9B001 is amended by moving the phrases ''specially designed'' and ''as follows (*see* List of Items Controlled)'' within the Heading to conform to WA text.

ECCN 9B002 is amended by adding the word ''and'' to the Heading to conform with WA text.

ECCN 9B003 is amended by removing a superfluous comma from the Heading to correct the punctuation.

ECCN 9B004 is amended by adding a comma to the Heading to correct the punctuation.

ECCN 9B005 is amended by:

a. Removing the phrase ''wind tunnels or devices'' from the Heading to conform with WA text; and

b. Moving the a phrase from 9B005.a to a new Note for 9B005.a and adding single quotes around the phrase 'test section size' in that same Note and the associated Technical Note because the term is defined in the entry.

ECCN 9B007 is amended by adding the word ''and'', capitalizing ''Non-Destructive Test'' and removing the capitalization on ''x-ray'' in the Heading to conform with WA text;

ECCN 9B009 is amended by capitalizing the phrase ''Ultimate Tensile Strength'' in the Heading to conform with WA text;

ECCN 9B010 is amended by adding a comma to correct the punctuation in the Heading.

ECCN 9D001 is amended by adding a comma to correct the punctuation in the Heading.

ECCN 9D003 is amended by capitalizing and adding double quotes around the phrase ''Full Authority Digital Electronic Engine Controls'' in the Heading to indicate that this term is defined in Part 772. (*Note:* WA defines this term under ''FADEC'')

ECCN 9D004 is amended by:

a. Removing commas from Heading and 9D004.b to correct the punctuation;

b. Adding commas to 9D004.a, .d, .e, and .g.2 to correct the punctuation;

c. Replacing periods with semi-colons in 9D004.d and .e to correct the punctuation;

d. Revising the Note to 9D004.d by removing the word ''uncontrolled'' and adding the phrase ''not controlled in the Commerce Control List (Supplement No. 1 to Part 774)'' to conform with the WA text;

e. Removing the superfluous word ''characteristics'' from 9D004.g to conform to the WA text; and

f. Removing the superfluous word ''Being'' and ''Having'' from 9D004.g.1 and g.2, respectively, to conform with WA text.

Note at the beginning of Category 9 Group E is amended by adding the phrase ''9E001 to 9E003'' in the second sentence and adding a period to the end of the second sentence to conform to WA text.

ECCN 9E001 is amended by:

a. Adding a comma to the Heading to correct the punctuation; and

b. Removing the text in the Related Definitions paragraph with ''N/A'' because this is redundant to the Note at the beginning of Product Group E of Category 9.

ECCN 9E003 is amended by:

a. Replacing a comma with the word ''or'' in 9E003.a to conform with WA text;

b. Adding a comma in Note 1 to 9E003.a.10 to correct punctuation;

c. Adding single quotes to the term 'incidence angle' in the Technical Note after 9E003.c.2.c to indicate that the term is defined in the entry; and

d. Removing a comma from 9E003.f to correct the punctuation.

Part 772 is amended by revising the terms ''specific modulus'' and ''specific tensile strength'' by adding a comma after the term ''N/m^2'' in each definition to clarify the meaning.

Since August 21, 2001, the Act has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 13, 2009 (74 FR 41,325 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1707).

Saving Clause

Shipments of items removed from license exception eligibility or eligibility for export without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on December 10, 2009, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported from the United States before February 8, 2010. Any such items not actually exported before midnight, on February 8, 2010, require a license in accordance with this regulation.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections of information subject to the PRA. One of the collections has been approved by OMB under control number 0694 0088, ''Multi Purpose Application,'' and carries a burden hour estimate of 58 minutes for a manual or electronic submission. The other of the collections has been approved by OMB under control number 0694 0106, ''Reporting and Recordkeeping Requirements under the Wassenaar Arrangement,'' and carries a burden hour estimate of 21 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet Seehra, OMB Desk Officer, by e-mail at *jseehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6622, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce,

14th and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230.

List of Subjects

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 772 and 774 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

PART 772—[AMENDED]

■ 1. The authority citations for part 772 continue to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 2. Section 772.1 is amended by revising terms ''specific modulus'' and ''specific tensile strength'' to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

''Specific modulus''. (Cat 1)—Young's modulus in pascals, equivalent to N/m^2, divided by specific weight in N/m^3, measured at a temperature of (296 ± 2) K ((23 ± 2)° C) and a relative humidity of (50 ± 5)%.

''Specific tensile strength''. (Cat 1)—Ultimate tensile strength in pascals, equivalent to N/m^2, divided by specific weight in N/m^3, measured at a temperature of (296 ± 2) K ((23 ± 2)° C) and relative humidity of (50 ± 5)%.

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PART 774— [AMENDED]

■ 3. The authority citations for part 774—continue to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 4. Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1A001 is amended by revising the items paragraph in the List of Items Controlled section, to read as follows:

Supplement No. 1 to Part 774—Commerce Control List

* * * * *

1A001 Components made from fluorinated compounds, as follows (*see* List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. Seals, gaskets, sealants or fuel bladders, specially designed for ''aircraft'' or aerospace use, made from more than 50% by weight of any of the materials controlled by 1C009.b or 1C009.c;

b. Piezoelectric polymers and copolymers, made from vinylidene fluoride materials, controlled by 1C009.a:

b.1. In sheet or film form; and

b.2. With a thickness exceeding 200 μm;

c. Seals, gaskets, valve seats, bladders or diaphragms, made from fluoroelastomers containing at least one vinylether group as a constitutional unit, specially designed for ''aircraft'', aerospace or missile use.

■ 5. Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1B001 is amended by:

■ a. Revising the Heading; and

■ b. Revising paragraphs .a, .b., .c. and .d.2, in the Items paragraph of the List of Items Controlled to read as follows:

1B001 Equipment for the production of fibers, prepregs, preforms or ''composites'', controlled by 1A002 or 1C010, as follows (*see* List of Items Controlled), and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

* * * * *

Items:

a. Filament winding machines of which the motions for positioning, wrapping and winding fibers are coordinated and programmed in three or more axes, specially designed for the manufacture of ''composite'' structures or laminates, from ''fibrous or filamentary materials'';

b. Tape-laying or tow-placement machines, of which the motions for positioning and laying tape, tows or sheets are coordinated and programmed in two or more axes, specially designed for the manufacture of ''composite'' airframe or ''missile'' structures;

c. Multidirectional, multidimensional weaving machines or interlacing machines, including adapters and modification kits, for weaving, interlacing or braiding fibers, to manufacture ''composite'' structures;

Technical Note: For the purposes of 1B001.c the technique of interlacing includes knitting.

Note: 1B001.c does not control textile machinery not modified for the above end-uses.

d. * * *

d.2. Equipment for the chemical vapor deposition of elements or compounds, on heated filamentary substrates, to manufacture silicon carbide fibers;

* * * * *

■ 6. Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C001 is amended by:

■ a. Revising the introductory paragraph to Note 1 paragraph c in the Items paragraph;

■ b. Revising the introductory paragraph to Note 1 paragraph d in the Items paragraph;

■ c. Revising the introductory paragraph to c in the Items paragraph;

■ d. Revising the Technical Note that follows paragraph c, to read as follows:

1C001 Materials specially designed for use as absorbers of electromagnetic waves, or intrinsically conductive polymers, as follows (*see* List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. * * *

Note 1: * * *

c. Planar absorbers, having all of the following:

* * * * *

d. Planar absorbers made of sintered ferrite, having all of the following:

* * * * *

c. Intrinsically conductive polymeric materials with a 'bulk electrical conductivity' exceeding 10,000 S/m (Siemens per meter) or a 'sheet (surface) resistivity' of less than 100 ohms/square, based on any of the following polymers:

* * * * *

Technical Note: 'Bulk electrical conductivity' and 'sheet (surface) resistivity' should be determined using ASTM D–257 or national equivalents.

■ 7. Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C002 is amended by revising the Items paragraph in the List of Items Controlled section, to read as follows:

1C002 Metal alloys, metal alloy powder and alloyed materials, as follows (*see* List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items:

Note: 1C002 does not control metal alloys, metal alloy powder and alloyed materials, for coating substrates.

Technical Note 1: The metal alloys in 1C002 are those containing a higher percentage by weight of the stated metal than of any other element.

Technical Note 2: 'Stress-rupture life' should be measured in accordance with ASTM standard E–139 or national equivalents.

Technical Note 3: 'Low cycle fatigue life' should be measured in accordance with ASTM Standard E–606 'Recommended Practice for Constant-Amplitude Low-Cycle

Fatigue Testing' or national equivalents. Testing should be axial with an average stress ratio equal to 1 and a stress-concentration factor (K_t) equal to 1. The average stress is defined as maximum stress minus minimum stress divided by maximum stress.

a. Aluminides, as follows:

a.1. Nickel aluminides containing a minimum of 15% by weight aluminum, a maximum of 38% by weight aluminum and at least one additional alloying element;

a.2. Titanium aluminides containing 10% by weight or more aluminum and at least one additional alloying element;

b. Metal alloys, as follows, made from material controlled by 1C002.c:

b.1. Nickel alloys having any of the following:

b.1.a. A 'stress-rupture life' of 10,000 hours or longer at 923 K (650 °C) at a stress of 676 MPa; or

b.1.b. A 'low cycle fatigue life' of 10,000 cycles or more at 823 K (550 °C) at a maximum stress of 1,095 MPa;

b.2. Niobium alloys having any of the following:

b.2.a. A 'stress-rupture life' of 10,000 hours or longer at 1,073 K (800 °C) at a stress of 400 MPa; or

b.2.b. A 'low cycle fatigue life' of 10,000 cycles or more at 973 K (700 °C) at a maximum stress of 700 MPa;

b.3. Titanium alloys having any of the following:

b.3.a. A 'stress-rupture life' of 10,000 hours or longer at 723 K (450 °C) at a stress of 200 MPa; *or*

b.3.b. A 'low cycle fatigue life' of 10,000 cycles or more at 723 K (450 °C) at a maximum stress of 400 MPa;

b.4 Aluminum alloys having any of the following:

b.4.a. A tensile strength of 240 MPa or more at 473 K (200 °C); or

b.4.b. A tensile strength of 415 MPa or more at 298 K (25 °C);

b.5. Magnesium alloys having all the following:

b.5.a. A tensile strength of 345 MPa or more; and

b.5.b. A corrosion rate of less than 1 mm/year in 3% sodium chloride aqueous solution measured in accordance with ASTM standard G–31 or national equivalents;

c. Metal alloy powder or particulate material, having all of the following:

c.1. Made from any of the following composition systems:

Technical Note: X in the following equals one or more alloying elements.

c.1.a. Nickel alloys (Ni-Al-X, Ni-X–Al) qualified for turbine engine parts or components, *i.e.* with less than 3 non-metallic particles (introduced during the manufacturing process) larger than 100 µm in 10^9 alloy particles;

c.1.b. Niobium alloys (Nb-Al-X or Nb-X–Al, Nb-Si-X or Nb-X–Si, Nb-Ti-X or Nb-X–Ti);

c.1.c. Titanium alloys (Ti-Al-X or Ti-X–Al);

c.1.d. Aluminum alloys (Al-Mg-X or Al-X–Mg, Al-Zn-X or Al-X–Zn, Al-Fe-X or Al-X–Fe); or

c.1.e. Magnesium alloys (Mg-Al-X or Mg-X–Al);

c.2. Made in a controlled environment by any of the following processes:

c.2.a. ''Vacuum atomization'';

c.2.b. ''Gas atomization'';

c.2.c. ''Rotary atomization'';

c.2.d. ''Splat quenching'';

c.2.e. ''Melt spinning'' and ''comminution'';

c.2.f. ''Melt extraction'' and ''comminution''; *or*

c.2.g. ''Mechanical alloying''; *and*

c.3. Capable of forming materials controlled by 1C002.a or 1C002.b;

d. Alloyed materials, having all the following:

d.1. Made from any of the composition systems specified by 1C002.c.1;

d.2. In the form of uncomminuted flakes, ribbons or thin rods; *and*

d.3. Produced in a controlled environment by any of the following:

d.3.a. ''Splat quenching'';

d.3.b. ''Melt spinning''; or

d.3.c. ''Melt extraction''.

■ 8. Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C003 is amended by revising the Heading and the Items paragraph in the List of Items Controlled section, to read as follows:

1C003 Magnetic metals, of all types and of whatever form, having any of the following (*see* List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. Initial relative permeability of 120,000 or more and a thickness of 0.05 mm or less;

Technical Note: Measurement of initial permeability must be performed on fully annealed materials.

b. Magnetostrictive alloys having any of the following:

b.1. A saturation magnetostriction of more than 5×10^{-4}; or

b.2. A magnetomechanical coupling factor (k) of more than 0.8; or

c. Amorphous or 'nanocrystalline' alloy strips, having all of the following:

c.1. A composition having a minimum of 75% by weight of iron, cobalt or nickel;

c.2. A saturation magnetic induction (B_s) of 1.6 T or more; and

c.3. Any of the following:

c.3.a. A strip thickness of 0.02 mm or less; or

c.3.b. An electrical resistivity of 2×10^{-4}; ohm cm or more.

Technical Note: 'Nanocrystalline' materials in 1C003.c are those materials having a crystal grain size of 50 nm or less, as determined by X-ray diffraction.

■ 9. Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C004 is amended by revising the Heading, to read as follows:

1C004 Uranium titanium alloys or tungsten alloys with a ''matrix'' based on iron, nickel or copper, having all of the following (*see* List of Items Controlled).

* * * * *

■ 10. Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C005 is amended by revising the items paragraph in the List of Items Controlled section, to read as follows:

1C005 ''Superconductive'' ''composite'' conductors in lengths exceeding 100 m or with a mass exceeding 100 g, as follows (*see* List of Items Controlled).

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List of Items Controlled

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Items:

a. ''Superconductive'' ''composite'' conductors containing one or more niobium-titanium 'filaments', having all of the following:

a.1. Embedded in a ''matrix'' other than a copper or copper-based mixed ''matrix''; and

a.2. Having a cross-section area less than 0.28×10^{-4} mm^2 (6 µm in diameter for circular 'filaments');

b. ''Superconductive'' ''composite'' conductors consisting of one or more ''superconductive'' 'filaments' other than niobium-titanium, having all of the following:

b.1. A ''critical temperature'' at zero magnetic induction exceeding 9.85 K (−263.31 °C); and

b.2. Remaining in the ''superconductive'' state at a temperature of 4.2 K (−268.96 °C) when exposed to a magnetic field oriented in any direction perpendicular to the longitudinal axis of conductor and corresponding to a magnetic induction of 12 T with critical current density exceeding 1750 A/mm^2 on overall cross-section of the conductor.

c. ''Superconductive'' ''composite'' conductors consisting of one or more ''superconductive'' 'filaments' which remain ''superconductive'' above 115 K (−158.16 °C).

Technical Note: For the purpose of 1C005, 'filaments' may be in wire, cylinder, film, tape or ribbon form.

■ 11. Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C006 is amended by revising the Items paragraph in the List of Items Controlled section, to read as follows:

1C006 Fluids and lubricating materials, as follows (*see* List of Items Controlled).

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List of Items Controlled

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Items:

a. Hydraulic fluids containing, as their principal ingredients, any of the following:

a.1. Synthetic 'silahydrocarbon oils', having all of the following:

Technical Note: For the purpose of 1C006.a.1, 'silahydrocarbon oils' contain exclusively silicon, hydrogen and carbon.

a.1.a. A 'flash point' exceeding 477 K (204 °C);

a.1.b. A 'pour point' at 239 K (−34 °C) or less;

a.1.c. A 'viscosity index' of 75 or more; and

a.1.d. A 'thermal stability' at 616 K (343 °C); or

a.2. 'Chlorofluorocarbons', having all of the following:

Technical Note: For the purpose of 1C006.a.2, 'chlorofluorocarbons' contain exclusively carbon, fluorine and chlorine.

a.2.a. No 'flash point';

a.2.b. An 'autogenous ignition temperature' exceeding 977 K (704 °C);

a.2.c. A 'pour point' at 219 K (−54 °C) or less;

a.2.d. A 'viscosity index' of 80 or more; and

a.2.e. A boiling point at 473 K (200 °C) or higher;

Technical Note: For the purpose of 1C006.a the following determinations apply:

i. 'Flash point' is determined using the Cleveland Open Cup Method described in ASTM D–92 or national equivalents;

ii. 'Pour point' is determined using the method described in ASTM D–97 or national equivalents;

iii. 'Viscosity index' is determined using the method described in ASTM D–2270 or national equivalents;

iv. 'Thermal stability' is determined by the following test procedure or national equivalents:

Twenty ml of the fluid under test is placed in a 46 ml type 317 stainless steel chamber containing one each of 12.5 mm (nominal) diameter balls of M–10 tool steel, 52100 steel and naval bronze (60% Cu, 39% Zn, 0.75% Sn);

The chamber is purged with nitrogen, sealed at atmospheric pressure and the temperature raised to and maintained at 644 ± 6 K (371 ± 6 °C) for six hours;

The specimen will be considered thermally stable if, on completion of the above procedure, all of the following conditions are met:

a. The loss in weight of each ball is less than 10 mg/mm^2 of ball surface;

b. The change in original viscosity as determined at 311 K (38 °C) is less than 25%; and

c. The total acid or base number is less than 0.40;

5. 'Autogenous ignition temperature' is determined using the method described in ASTM E–659 or national equivalents.

b. Lubricating materials containing, as their principal ingredients, any of the following:

b.1. Phenylene or alkylphenylene ethers or thio-ethers, or their mixtures, containing more than two ether or thio-ether functions or mixtures thereof; or

b.2. Fluorinated silicone fluids with a kinematic viscosity of less than 5,000 mm^2/s (5,000 centistokes) measured at 298 K (25 °C);

c. Damping or flotation fluids, with a purity exceeding 99.8%, containing less than 25 particles of 200 μm or larger in size per 100 ml and made from at least 85% of any of the following:

c.1. Dibromotetrafluoroethane;

c.2. Polychlorotrifluoroethylene (oily and waxy modifications only); or

c.3. Polybromotrifluoroethylene;

d. Fluorocarbon electronic cooling fluids having all of the following:

d.1. Containing 85% by weight or more of any of the following, or mixtures thereof:

d.1.a. Monomeric forms of perfluoropolyalkylether- triazines or perfluoroaliphatic-ethers;

d.1.b. Perfluoroalkylamines;

d.1.c. Perfluorocycloalkanes; or

d.1.d. Perfluoroalkanes;

d.2. Density at 298 K (25 °C) of 1.5 g/ml or more;

d.3. In a liquid state at 273 K (0 °C); and

d.4. Containing 60% or more by weight of fluorine;

e. Autogenous ignition temperature is determined using the method described in ASTM E–659 or national equivalents.

■ 12. Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C007 is amended by revising paragraph .a in the Items paragraph in the List of Items Controlled section, to read as follows:

1C007 Ceramic base materials, non-''composite'' ceramic materials, ceramic-''matrix'' ''composite'' materials and precursor materials, as follows (*see* List of Items Controlled).

* * * * *

List of Items Controlled

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Items:

a. Base materials of single or complex borides of titanium, having total metallic impurities, excluding intentional additions, of less than 5,000 ppm, an average particle size equal to or less than 5 μm and no more than 10% of the particles larger than 10 μm;

* * * * *

■ 13. Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C009 is amended by revising the Heading, to read as follows:

1C009 Unprocessed fluorinated compounds as follows (*see* List of Items Controlled).

* * * * *

■ 14. Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C011 is amended by revising the Items paragraph in the List of Items Controlled section, to read as follows:

1C011 Metals and compounds, as follows (*see* List of Items Controlled).

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List of Items Controlled

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Items:

a. Metals in particle sizes of less than 60 μm whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99% or more of zirconium, magnesium and alloys thereof;

Technical Note: The natural content of hafnium in the zirconium (typically 2% to 7%) is counted with the zirconium.

Note: The metals or alloys specified by 1C011.a also refer to metals or alloys encapsulated in aluminum, magnesium, zirconium or beryllium.

b. Boron or boron carbide of 85% purity or higher, and a particle size of 60 μm or less;

Note: The metals or alloys specified by 1C011.b also refer to metals or alloys encapsulated in aluminum, magnesium, zirconium or beryllium.

c. Guanidine nitrate;

d. Nitroguanidine (NQ) (CAS 556–88–7).

■ 15. Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C012 is amended by revising the Items paragraph in the List of Items Controlled section, to read as follows:

1C012 Materials, as follows (*see* List of Items Controlled).

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List of Items Controlled

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Items:

a. Plutonium in any form with a plutonium isotopic assay of plutonium-238 of more than 50% by weight;

Note: 1C012.a does not control:

a. Shipments with a plutonium content of 1 g or less;

b. Shipments of 3 ''effective grams'' or less when contained in a sensing component in instruments.

b. ''Previously separated'' neptunium-237 in any form.

Note: 1C012.b does not control shipments with a neptunium-237 content of 1 g or less.

■ 16. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2A001 is amended by revising the Items paragraph of the List of Items Controlled to read as follows:

2A001 Anti-friction bearings and bearing systems, as follows, (see List of Items Controlled) and components therefor.

* * * * *

List of Items Controlled

* * * * *

Items:

Note: 2A001 does not control balls with tolerances specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse.

a. Ball bearings and solid roller bearings, having all tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 4 (or ANSI/ABMA Std 20 Tolerance Class ABEC–7 or RBEC–7, or other national equivalents), or better, and having both rings and rolling elements (ISO 5593), made from monel or beryllium;

Note: 2A001.a does not control tapered roller bearings.

b. Other ball bearings and solid roller bearings, having all tolerances specified by

the manufacturer in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or RBEC–9, or other national equivalents), or better;

Note: 2A001.b does not control tapered roller bearings.

c. Active magnetic bearing systems using any of the following:

c.1. Materials with flux densities of 2.0 T or greater and yield strengths greater than 414 MPa;

c.2. All-electromagnetic 3D homopolar bias designs for actuators; or

c.3. High temperature (450 K (177°C) and above) position sensors.

■ 17. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2B001 is amended by revising the introductory text to the Note that follows paragraph c in the Items paragraph of the List of Items Controlled to read as follows:

2B001 Machine tools and any combination thereof, for removing (or cutting) metals, ceramics or ''composites'', which, according to the manufacturer's technical specifications, can be equipped with electronic devices for ''numerical control''; and specially designed components as follows (*see* List of Items Controlled).

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List of Items Controlled

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Items:

* * * * *

c. * * *

Notes: 2B001.c does not control grinding machines as follows: * * *

* * * * *

■ 18. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2B004 is amended by revising the Heading and the introductory paragraph .b in the Items paragraph of the List of Items Controlled to read as follows:

2B004 Hot ''isostatic presses'' having all of the characteristics described in the List of Items Controlled, and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. Having any of the following:

* * * * *

■ 19. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2B005 is amended by revising the Related Controls and Items paragraph of the List of Items Controlled to read as follows:

2B005 Equipment specially designed for the deposition, processing and in-process control of inorganic overlays, coatings and surface modifications, as follows, for non-electronic substrates, by processes shown in the Table and associated Notes following 2E003.f, and specially designed automated handling, positioning, manipulation and control components therefor.

* * * * *

List of Items Controlled

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Related Controls: (1) This entry does not control chemical vapor deposition, cathodic arc, sputter deposition, ion plating or ion implantation equipment, specially designed for cutting or machining tools. (2) Vapor deposition equipment for the production of filamentary materials are controlled by 1B001 or 1B101. (3) Chemical Vapor Deposition furnaces designed or modified for densification of carbon-carbon composites are controlled by *2B104.* (4) *See also 2B999.i.*

* * * * *

Items:

a. Chemical vapor deposition (CVD) production equipment having all of the following:

a.1. A process modified for one of the following:

a.1.a. Pulsating CVD;

a.1.b. Controlled nucleation thermal deposition (CNTD); or

a.1.c. Plasma enhanced or plasma assisted CVD; and

a.2. Having any of the following:

a.2.a. Incorporating high vacuum (equal to or less than 0.01 Pa) rotating seals; or

a.2.b. Incorporating in situ coating thickness control;

b. Ion implantation production equipment having beam currents of 5 mA or more;

c. Electron beam physical vapor deposition (EB–PVD) production equipment incorporating power systems rated for over 80 kW and having any of the following:

c.1. A liquid pool level ''laser'' control system which regulates precisely the ingots feed rate; *or*

c.2. A computer controlled rate monitor operating on the principle of photo-luminescence of the ionized atoms in the evaporant stream to control the deposition rate of a coating containing two or more elements;

d. Plasma spraying production equipment having any of the following:

d.1. Operating at reduced pressure controlled atmosphere (equal or less than 10 kPa measured above and within 300 mm of the gun nozzle exit) in a vacuum chamber capable of evacuation down to 0.01 Pa prior to the spraying process; *or*

d.2. Incorporating in situ coating thickness control;

e. Sputter deposition production equipment capable of current densities of 0.1 mA/mm^2 or higher at a deposition rate 15 μm/h or more;

f. Cathodic arc deposition production equipment incorporating a grid of electromagnets for steering control of the arc spot on the cathode;

g. Ion plating production equipment allowing for the in situ measurement of any of the following:

g.1. Coating thickness on the substrate and rate control; *or*

g.2. Optical characteristics.

■ 20. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2B009 is amended by revising the Items paragraph of the List of Items Controlled to read as follows:

2B009 Spin-forming machines and flow-forming machines, which, according to the manufacturer's technical specifications, can be equipped with ''numerical control'' units or a computer control and having all of the following characteristics (*see* List of Items Controlled).

* * * * *

List of Items Controlled

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Items:

a. Two or more controlled axes of which at least two can be coordinated simultaneously for ''contouring control''; *and*

b. A roller force more than 60 kN.

Technical Note: For the purpose of 2B009, machines combining the function of spin-forming and flow-forming are regarded as flow-forming machines.

■ 21. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2E003 is amended by revising the Nota Bene after 2E003.f in the Items paragraph of the List of Items Controlled to read as follows:

2E003 Other ''technology'', as follows (*see* List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

f. * * *

N.B. *This table should be read to control the technology of a particular 'Coating Process' only when the resultant coating in column 3 is in a paragraph directly across from the relevant 'Substrate' under column 2. For example, Chemical Vapor Deposition (CVD) 'coating process' technical data are controlled for the application of 'silicides' to 'Carbon-carbon, Ceramic and Metal ''matrix'' ''composites'' substrates, but are not controlled for the application of 'silicides' to 'Cemented tungsten carbide (16), Silicon carbide (18)' substrates. In the second case, the resultant coating is not listed in the paragraph under column 3 directly across from the paragraph under column 2 listing 'Cemented tungsten carbide (16), Silicon carbide (18)'.*

■ 22. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, Notes to Table on Deposition Techniques are amended by revising Notes 5, 10, and 17, to read as follows:

Note: Notes to Table on Deposition Techniques:

* * * * *

5. MCrAlX refers to a coating alloy where M equals cobalt, iron, nickel or combinations thereof and X equals hafnium, yttrium, silicon, tantalum in any amount or other intentional additions over 0.01% by weight in various proportions and combinations, except:

a. CoCrAlY coatings which contain less than 22% by weight of chromium, less than 7% by weight of aluminum and less than 2% by weight of yttrium;

b. CoCrAlY coatings which contain 22 to 24% by weight of chromium, 10 to 12% by weight of aluminum and 0.5 to 0.7% by weight of yttrium; or

c. NiCrAlY coatings which contain 21 to 23% by weight of chromium, 10 to 12% by weight of aluminum and 0.9 to 1.1% by weight of yttrium.

* * * * *

10. ''Technology'' for single-step pack cementation of solid airfoils is not controlled by Category 2.

* * * * *

17. ''Technology'' specially designed to deposit diamond-like carbon on any of the following is not controlled: magnetic disk drives and heads, equipment for the manufacture of disposables, valves for faucets, acoustic diaphragms for speakers, engine parts for automobiles, cutting tools, punching-pressing dies, office automation equipment, microphones, medical devices or molds, for casting or molding of plastics, manufactured from alloys containing less than 5% beryllium.

* * * * *

■ 23. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, ECCN 3A002 is amended by revising Note 1 that follows paragraph d in the Items paragraph of the List of Items Controlled section to read as follows:

3A002 General purpose electronic equipment and accessories therefor, as follows (*see* List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

d. * * *

Note 1: For the purpose of 3A002.d., frequency synthesized signal generators include arbitrary waveform and function generators.

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■ 24. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, ECCN 3B002 is amended by revising the Heading to read as follows:

3B002 Test equipment specially designed for testing finished or unfinished semiconductor devices as follows (*see* List of Items Controlled) and specially designed components and accessories therefor.

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■ 25. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, ECCN 3C001 is amended by revising the Items paragraph of the List of Items Controlled section to read as follows:

3C001 Hetero-epitaxial materials consisting of a ''substrate'' having stacked epitaxially grown multiple layers of any of the following (*see* List of Items Controlled).

* * * * *

List of Items Controlled

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Items:

a. Silicon (Si);

b. Germanium (Ge);

c. Silicon Carbide (SiC); *or*

d. ''III/V compounds'' of gallium or indium.

■ 26. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, ECCN 3C003 is amended by revising the Heading and the Items paragraph of the List of Items Controlled section to read as follows:

3C003 Organo-inorganic compounds as follows (*see* List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items:

a. Organo-metallic compounds of aluminum, gallium or indium, having a purity (metal basis) better than 99.999%;

b. Organo-arsenic, organo-antimony and organo-phosphorus compounds, having a purity (inorganic element basis) better than 99.999%.

■ 27. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, ECCN 3D002 is amended by revising the Heading and the Items paragraph of the List of Items Controlled section to read as follows:

3D002 ''Software'' specially designed for the ''use'' of equipment controlled by 3B001.a to .f, or 3B002.

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List of Items Controlled

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Items:

The list of items controlled is contained in the ECCN heading.

■ 28. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, ECCN 3D003 is amended by revising the Heading to read as follows:

3D003 'Physics-based' simulation ''software'' specially designed for the ''development'' of lithographic, etching or deposition processes for translating masking patterns into specific topographical patterns in conductors, dielectrics or semiconductor materials.

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■ 29. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, ECCN 3D004 is amended by revising the Heading to read as follows:

3D004 ''Software'' specially designed for the ''development'' of equipment controlled by 3A003.

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■ 30. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3, ECCN 3E002 is amended by revising the Items paragraph of the List of Items Controlled section to read as follows:

3E002 ''Technology'' according to the General Technology Note other than that controlled in 3E001 for the ''development'' or ''production'' of a ''microprocessor microcircuit'', ''micro-computer microcircuit'' and microcontroller microcircuit core, having an arithmetic logic unit with an access width of 32 bits or more and any of the following features or characteristics (*see* List of Items Controlled).

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List of Items Controlled

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Items:

a. A 'vector processor unit' designed to perform more than two calculations on floating-point vectors (one dimensional arrays of 32-bit or larger numbers) simultaneously;

Technical Note: A 'vector processor unit' is a processor element with built-in instructions that perform multiple calculations on floating-point vectors (one-dimensional arrays of 32-bit or larger numbers) simultaneously, having at least one vector arithmetic logic unit.

b. Designed to perform more than two 64-bit or larger floating-point operation results per cycle; or

c. Designed to perform more than four 16-bit fixed-point multiply-accumulate results per cycle (*e.g.,* digital manipulation of analog information that has been previously converted into digital form, also known as digital ''signal processing'').

Note: 3E002.c does not control ''technology'' for multimedia extensions.

Notes:

1. 3E002 does not control ''technology'' for the ''development'' or ''production'' of microprocessor cores, having all of the following:

a. Using ''technology'' at or above 0.130 µm; *and*

b. Incorporating multi-layer structures with five or fewer metal layers.

2. 3E002 includes ''technology'' for digital signal processors and digital array processors.

■ 31. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3. ECCN 3E003 is amended by revising the Heading and the Items paragraph of the List of Items Controlled section to read as follows:

3E003 Other ''technology'' for the ''development'' or ''production'' of the following (*see* List of Items Controlled).

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List of Items Controlled

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Items:

a. Vacuum microelectronic devices;

b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;

Note: 3E003.b does not control ''technology'' for high electron mobility transistors (HEMT) operating at frequencies lower than 31.8 GHz and hetero-junction bipolar transistors (HBT) operating at frequencies lower than 31.8 GHz.

c. ''Superconductive'' electronic devices;

d. Substrates of films of diamond for electronic components;

e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;

f. Substrates of silicon carbide for electronic components;

g. Electronic vacuum tubes operating at frequencies of 31.8 GHz or higher.

■ 32. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 4, ECCN 4A001 is amended by revising the Heading and Items paragraph of the List of Items Controlled section to read as follows:

4A001 Electronic computers and related equipment, having any of the following (*see* List of Items Controlled), and ''electronic assemblies'' and specially designed components therefor.

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List of Items Controlled

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Items:

a. Specially designed to have any of the following:

a.1. Rated for operation at an ambient temperature below 228 K (−45EC) or above 358 K (85EC); or

Note: 4A001.a.1. does not apply to computers specially designed for civil automobile or railway train applications.

a.2. Radiation hardened to exceed any of the following specifications:

a.2.a. A total dose of 5 x 10^3 Gy (Si);

a.2.b. A dose rate upset of 5 x 10^6 Gy (Si)/s; or

a.2.c. Single Event Upset of 1 x 10^{-7} Error/bit/day;

b. Having characteristics or performing functions exceeding the limits in Category 5, Part 2 (''Information Security'').

■ 33. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 4, ECCN 4A003 is amended by revising the Heading and Items paragraph of the List of Items Controlled section to read as follows:

4A003 ''Digital computers'', ''electronic assemblies'', and related equipment therefor, as follows and specially designed components therefor.

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List of Items Controlled

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Items:

Note 1: 4A003 includes the following:

—'Vector processors' (as defined in Note 7 of the ''Technical Note on ''Adjusted Peak Performance'' (''APP'')'');
—Array processors;
—Digital signal processors;
—Logic processors;
—Equipment designed for ''image enhancement'';
—Equipment designed for ''signal processing''.

Note 2: The control status of the ''digital computers'' and related equipment described in 4A003 is determined by the control status of other equipment or systems provided:

a. The ''digital computers'' or related equipment are essential for the operation of the other equipment or systems;

b. The ''digital computers'' or related equipment are not a ''principal element'' of the other equipment or systems; and

N.B. 1: The control status of ''signal processing'' or ''image enhancement'' equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the ''principal element'' criterion.

N.B. 2: For the control status of ''digital computers'' or related equipment for telecommunications equipment, *see* Category 5, Part 1 (Telecommunications).

c. The ''technology'' for the ''digital computers'' and related equipment is determined by 4E.

a. Designed or modified for ''fault tolerance'';

Note: For the purposes of 4A003.a., ''digital computers'' and related equipment are not considered to be designed or modified for ''fault tolerance'' if they utilize any of the following:

1. Error detection or correction algorithms in ''main storage'';

2. The interconnection of two ''digital computers'' so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;

3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; or

4. The synchronization of two central processing units by ''software'' so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. ''Digital computers'' having an ''Adjusted Peak Performance'' (''APP'') exceeding 0.75 weighted TeraFLOPS (WT);

c. ''Electronic assemblies'' specially designed or modified to be capable of enhancing performance by aggregation of processors so that the ''APP'' of the aggregation exceeds the limit in 4A003.b.;

Note 1: 4A003.c applies only to ''electronic assemblies'' and programmable interconnections not exceeding the limit in 4A003.b. when shipped as unintegrated ''electronic assemblies''. It does not apply to ''electronic assemblies'' inherently limited by nature of their design for use as related equipment controlled by 4A003.e.

Note 2: 4A003.c does not control ''electronic assemblies'' specially designed for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.

d. [RESERVED]

e. Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5;

f. [RESERVED]

g. Equipment specially designed to provide external interconnection of ''digital computers'' or associated equipment that allows communications at data rates exceeding 1.25 Gbyte/s.

Note: 4A003.g does not control internal interconnection equipment (*e.g.,* backplanes, buses) passive interconnection equipment, ''network access controllers'' or ''communication channel controllers''.

■ 34. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 4, ECCN 4A004 is amended by revising the Heading to read as follows:

4A004 Computers as follows (*see* List of Items Controlled) and specially designed related equipment, ''electronic assemblies'' and components therefor.

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■ 35. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 4—Computers is amended by revising Technical Note on ''Adjusted Peak Performance'' (''APP''), located at the end of Category 4, to read as follows:

Technical Note on ''Adjusted Peak Performance'' (''APP'')

''APP'' is an adjusted peak rate at which ''digital computers'' perform 64-bit or larger floating point additions and multiplications.

Abbreviations used in this Technical Note

n number of processors in the ''digital computer''
I processor number (i,....n)
ti processor cycle time (ti = 1/Fi)
Fi processor frequency
Ri peak floating point calculating rate
Wi architecture adjustment factor

''APP'' is expressed in Weighted TeraFLOPS (WT), in units of 1012 adjusted floating point operations per second,

Outline of ''APP'' Calculation Method

1. For each processor i, determine the peak number of 64-bit or larger floating-point operations, FPOi, performed per cycle for each processor in the ''digital computer''.

Note: In determining FPO, include only 64-bit or larger floating point additions and/or multiplications. All floating point operations must be expressed in operations per processor cycle; operations requiring multiple cycles may be expressed in fractional results per cycle. For processors not capable of performing calculations on floating-point operands of 64-bits or more the effective calculating rate R is zero.

2. Calculate the floating point rate R for each processor.

Ri = FPOi/ti.

3. Calculate ''APP'' as

''APP'' = W1 × R1 + W2 × R2 + * * * + Wn × Rn.

4. For 'vector processors', Wi = 0.9. For non-'vector processors', Wi = 0.3.

Note 1: For processors that perform compound operations in a cycle, such as an addition and multiplication, each operation is counted.

Note 2: For a pipelined processor the effective calculating rate R is the faster of the pipelined rate, once the pipeline is full, or the non-pipelined rate.

Note 3: The calculating rate R of each contributing processor is to be calculated at its maximum value theoretically possible before the ''APP'' of the combination is derived. Simultaneous operations are assumed to exist when the computer manufacturer claims concurrent, parallel, or simultaneous operation or execution in a manual or brochure for the computer.

Note 4: Do not include processors that are limited to input/output and peripheral functions (*e.g.,* disk drive, communication and video display) when calculating ''APP''.

Note 5: ''APP'' values are not to be calculated for processor combinations (inter)connected by ''Local Area Networks'', Wide Area Networks, I/O shared connections/devices, I/O controllers and any communication interconnection implemented by ''software''.

Note 6: ''APP'' values must be calculated for (1) processor combinations containing processors specially designed to enhance performance by aggregation, operating simultaneously and sharing memory; or (2) multiple memory/processor combinations operating simultaneously utilizing specially designed hardware.

Note 7: A 'vector processor' is defined as a processor with built-in instructions that perform multiple calculations on floating-point vectors (one-dimensional arrays of 64-bit or larger numbers) simultaneously, having at least 2 vector functional units and at least 8 vector registers of at least 64 elements each.

■ 36. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6, ECCN 6A007 is amended by revising the Items paragraph of the List of Items Controlled section, to read as follows:

6A007 Gravity meters (gravimeters) and gravity gradiometers, as follows (*see* List of Items Controlled).

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List of Items Controlled

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Items:

a. Gravity meters designed or modified for ground use and having a static accuracy of less (better) than 10 μgal;

Note: 6A007.a does not control ground gravity meters of the quartz element (Worden) type.

b. Gravity meters designed for mobile platforms and having all of the following:

b.1. A static accuracy of less (better) than 0.7 mgal; *and*

b.2. An in-service (operational) accuracy of less (better) than 0.7 mgal having a time-to-steady-state registration of less than 2 minutes under any combination of attendant corrective compensations and motional influences;

c. Gravity gradiometers.

■ 37. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6, ECCN 6B004 is amended by revising the Heading, to read as follows:

6B004 Optical equipment as follows (*see* List of Items Controlled).

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■ 38. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6, ECCN 6B008 is amended by revising the Heading, to read as follows:

6B008 Pulse radar cross-section measurement systems having transmit pulse widths of 100 ns or less, and specially designed components therefor.

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■ 39. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6, ECCN 6C002 is amended by revising the Heading and Items paragraph of the List of Items Controlled section, to read as follows:

6C002 Optical sensor materials as follows (see List of Items Controlled).

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List of Items Controlled

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Items:

a. Elemental tellurium (Te) of purity levels of 99.9995% or more;

b. Single crystals (including epitaxial wafers) of any of the following:

b.1. Cadmium zinc telluride (CdZnTe), with zinc content less than 6% by 'mole fraction';

b.2. Cadmium telluride (CdTe) of any purity level; or

b.3. Mercury cadmium telluride (HgCdTe) of any purity level.

Technical Note: 'Mole fraction' is defined as the ratio of moles of ZnTe to the sum of the moles of CdTe and ZnTe present in the crystal.

■ 40. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6, ECCN 6C004 is amended by revising the Heading and the Items paragraph of the List of Items Controlled section, to read as follows:

6C004 Optical materials as follows (see List of Items Controlled).

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List of Items Controlled

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Items:

a. Zinc selenide (ZnSe) and zinc sulphide (ZnS) ''substrate blanks'', produced by the chemical vapor deposition process and having any of the following:

a.1. A volume greater than 100 cm^3; or

a.2. A diameter greater than 80 mm and a thickness of 20 mm or more;

b. Boules of any of the following electro-optic materials:

b.1. Potassium titanyl arsenate (KTA);

b.2. Silver gallium selenide ($AgGaSe_2$); *or*

b.3. Thallium arsenic selenide (Tl_3AsSe_3, also known as TAS);

c. Non-linear optical materials having all of the following:

c.1. Third order susceptibility (chi 3) of 10^{-6} m^2/V^2 or more; *and*

c.2. A response time of less than 1 ms;

d. ''Substrate blanks'' of silicon carbide or beryllium beryllium (Be/Be) deposited materials, exceeding 300 mm in diameter or major axis length;

e. Glass, including fused silica, phosphate glass, fluorophosphate glass, zirconium fluoride (ZrF_4) and hafnium fluoride (HfF_4) and having all of the following:

e.1. A hydroxyl ion (OH-) concentration of less than 5 ppm;

e.2. Integrated metallic purity levels of less than 1 ppm; and

e.3. High homogeneity (index of refraction variance) less than 5×10^{-6};

f. Synthetically produced diamond material with an absorption of less than 10^{-5} cm^{-1} for wavelengths exceeding 200 nm but not exceeding 14,000 nm.

■ 41. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6, ECCN 6C005 is amended by revising the Heading to read as follows:

6C005 Synthetic crystalline ''laser'' host material in unfinished form as follows (*see* List of Items Controlled).

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■ 42. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6, ECCN 6E003 is amended by revising the Heading and Items paragraphs of the List of Items Controlled section, to read as follows:

6E003 Other ''technology'' as follows (*see* List of Items Controlled).

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List of Items Controlled

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Items:

a. Acoustics. None.

b. Optical sensors. None.

c. Cameras. None.

OPTICS

d. ''Technology'' as follows:

d.1. Optical surface coating and treatment ''technology'', ''required'' to achieve uniformity of 99.5% or better for optical coatings 500 mm or more in diameter or major axis length and with a total loss (absorption and scatter) of less than 5×10^{-3};

N.B.: *See also* 2E003.f.

d.2. Optical fabrication ''technology'' using single point diamond turning techniques to produce surface finish accuracies of better than 10 nm rms on non-planar surfaces exceeding 0.5 m^2;

e. Lasers. ''Technology'' ''required'' for the ''development'', ''production'' or ''use'' of specially designed diagnostic instruments or targets in test facilities for ''SHPL'' testing or testing or evaluation of materials irradiated by ''SHPL'' beams;

f. Magnetic and Electric Field Sensors. None

g. Gravimeters. None

h. Radar. None

■ 43. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7A001 is amended by revising the Heading and Items paragraph in the List of Items Controlled section, to read as follows:

7A001 Accelerometers as follows (*see* List of Items Controlled) and specially designed components therefor.

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List of Items Controlled

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Items:

a. Linear accelerometers having any of the following:

a.1. Specified to function at linear acceleration levels less than or equal to 15 g and having any of the following:

a.1.a. A ''bias'' ''stability'' of less (better) than 130 micro g with respect to a fixed calibration value over a period of one year; or

a.1.b. A ''scale factor'' ''stability'' of less (better) than 130 ppm with respect to a fixed calibration value over a period of one year;

a.2. Specified to function at linear acceleration levels exceeding 15 g and having all of the following:

a.2.a.A ''bias'' ''repeatability'' of less (better) than 5,000 micro g over a period of one year; and

a.2.b.A ''scale factor'' ''repeatability'' of less (better) than 2,500 ppm over a period of one year; or

a.3. Designed for use in inertial navigation or guidance systems and specified to function at linear acceleration levels exceeding 100 g;

b. Angular or rotational accelerometers, specified to function at linear acceleration levels exceeding 100 g.

■ 44. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7A002 is amended by revising the Heading and the Items paragraph, to read as follows:

7A002 Gyros or angular rate sensors, having any of the following (*see* List of Items Controlled) and specially designed components therefor.

List of Items Controlled

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Items:

a. A ''bias'' ''stability'', when measured in a 1 g environment over a period of one month, and with respect to a fixed calibration value, of less (better) than 0.5 degree per hour when specified to function at linear acceleration levels up to and including 100 g;

b. An ''angle random walk'' of less (better) than or equal to 0.0035 degree per square root hour; *or*

Note: 7A002.b does not control 'spinning mass gyros'.

Technical Note: 'Spinning mass gyros' are gyros which use a continually rotating mass to sense angular motion.

c. A rate range greater than or equal to 500 degrees per second and having any of the following:

c.1. A ''bias'' ''stability'', when measured in a 1 g environment over a period of three minutes, and with respect to a fixed calibration value of less (better) than 40 degrees per hour; or

c.2 An ''angle random walk'' of less (better) than or equal to 0.2 degree per square root hour; or

d. Specified to function at linear acceleration levels exceeding 100 g.

■ 45. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7A004 is amended by revising the Heading, to read as follows:

7A004 Gyro-astro compasses and other devices which derive position or orientation by means of automatically tracking celestial bodies or satellites, with an azimuth accuracy of equal to or less (better) than 5 seconds of arc.

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■ 46. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7A006 is amended by revising the Heading to read as follows:

7A006 Airborne altimeters operating at frequencies other than 4.2 to 4.4 GHz inclusive and having any of the following (*see* List of Items Controlled).

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■ 47. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7A008 is amended by revising the Heading to read as follows:

7A008 Underwater sonar navigation systems using Doppler velocity or correlation velocity logs integrated with a heading source and having a positioning accuracy of equal to or less (better) than 3% of distance traveled ''Circular Error Probable'' (''CEP'') and specially designed components therefore.

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■ 48. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7B001 is amended by revising the Heading, and the Related Controls and Related Definitions paragraphs in the List of Items Controlled section, to read as follows:

7B001 Test, calibration or alignment equipment, specially designed for equipment controlled by 7A (except 7A994).

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List of Items Controlled

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Related Controls: (1) *See also 7B101, 7B102* and *7B994.* (2) This entry does not control test, calibration or alignment equipment for 'Maintenance level I' or 'Maintenance Level II'.

Related Definition: (1) ''Maintenance Level I'': The failure of an inertial navigation unit is detected on the aircraft by indications from the Control and Display Unit (CDU) or by the status message from the corresponding sub-system. By following the manufacturer's manual, the cause of the failure may be localized at the level of the malfunctioning Line Replaceable Unit (LRU). The operator then removes the LRU and replaces it with a spare. (2) 'Maintenance Level II': The defective LRU is sent to the maintenance workshop (the manufacturer's or that of the operator responsible for level II maintenance). At the maintenance workshop, the malfunctioning LRU is tested by various appropriate means to verify and localize the defective Shop Replaceable Assembly (SRA) module responsible for the failure. This SRA is removed and replaced by an operative spare. The defective SRA (or possibly the complete LRU) is then shipped to the manufacturer. 'Maintenance Level II' does not include the removal of controlled accelerometers or gyro sensors from the SRA.

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■ 49. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7B002 is amended by revising the Heading to read as follows:

7B002 Equipment specially designed to characterize mirrors for ring ''laser'' gyros, as follows (*see* List of Items Controlled).

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■ 50. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7D002 is amended by revising the Heading and the Related Control and Related Definitions paragraphs in the List of Items Controlled Section, to read as follows:

7D002 ''Source code'' for the ''use'' of any inertial navigation equipment, including inertial equipment not controlled by 7A003 or 7A004, or Attitude and Heading Reference Systems ('AHRS').

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List of Items Controlled

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Related Controls: (1) *See also 7D102* and *7D994.* (2) This entry does not control ''source code'' for the ''use'' of gimballed 'AHRS'.

Related Definition: ''AHRS'' generally differ from Inertial Navigation Systems (INS) in that an 'AHRS' provides attitude and heading information and normally does not provide the acceleration, velocity and position information associated with an INS.

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■ 51. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7D003 is amended by revising the Heading and Items paragraph in the List of Items Controlled section, to read as follows:

7D003 Other ''software'' as follows (*see* List of Items Controlled).

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List of Items Controlled

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Items:

a. ''Software'' specially designed or modified to improve the operational performance or reduce the navigational error of systems to the levels controlled by 7A003, 7A004 or 7A008;

b. ''Source code'' for hybrid integrated systems which improves the operational performance or reduces the navigational error of systems to the level controlled by 7A003 or 7A008 by continuously combining heading data with any of the following:

b.1. Doppler radar or sonar velocity data;

b.2. Global navigation satellite systems (*i.e.,* GPS or GLONASS) reference data; or

b.3. Data from 'Data-Based Referenced Navigation' ('DBRN'') systems;

c. ''Source code'' for integrated avionics or mission systems which combine sensor data and employ ''expert systems'';

d. ''Source code'' for the ''development'' of any of the following:

d.1. Digital flight management systems for ''total control of flight'';

d.2. Integrated propulsion and flight control systems;

d.3. Fly-by-wire or fly-by-light control systems;

d.4. Fault-tolerant or self-reconfiguring ''active flight control systems'';

d.5. Airborne automatic direction finding equipment;

d.6. Air data systems based on surface static data; or

d.7. Raster-type head-up displays or three dimensional displays;

e. Computer-Aided-Design (CAD) ''software'' specially designed for the ''development'' of ''active flight control systems'', helicopter multi-axis fly-by-wire or fly-by-light controllers or helicopter ''circulation controlled anti-torque or circulation-controlled direction control systems'', whose ''technology'' is controlled by 7E004.b, 7E004.c.1 or 7E004.c.2.

■ 52. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7E001 is amended by revising the Heading, to read as follows:

7E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment or ''software'', controlled by 7A (except 7A994), 7B (except 7B994) or 7D (except 7D994).

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■ 53. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7E003 is amended by revising the Related Definitions paragraph in the List of Items Controlled, to read as follows:

7E003 ''Technology'' according to the General Technology Note for the repair, refurbishing or overhaul of equipment controlled by 7A001 to 7A004.

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List of Items Controlled

Related Definition: Refer to the Related Definitions for 7B001 for 'Maintenance Level I' or 'Maintenance Level II'.

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■ 54. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 7, ECCN 7E004 is amended by revising the Heading and the Items paragraph in the List of Items Controlled section, to read as follows:

7E004 Other ''technology'' as follows (*see* List of Items Controlled).

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List of Items Controlled

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Items:

a. ''Technology'' for the ''development'' or ''production'' of any of the following:

a.1. Airborne automatic direction finding equipment operating at frequencies exceeding 5 MHZ;

a.2. Air data systems based on surface static data only, *i.e.,* which dispense with conventional air data probes;

a.3. Raster-type head-up displays or three dimensional displays, for ''aircraft'';

a.4. Inertial navigation systems or gyro-astro compasses, containing accelerometers or gyros, controlled by 7A001 or 7A002;

a.5. Electric actuators (*i.e.,* electromechanical, electrohydrostatic and integrated actuator package) specially designed for ''primary flight control'';

a.6. ''Flight control optical sensor array'' specially designed for implementing ''active flight control systems''; or

a.7. ''DBRN'' systems designed to navigate underwater, using sonar or gravity databases, that provide a positioning accuracy equal to or less (better) than 0.4 nautical miles;

b. ''Development'' ''technology'', as follows, for ''active flight control systems'' (including fly-by-wire or fly-by-light):

b.1. Configuration design for interconnecting multiple microelectronic processing elements (on-board computers) to achieve ''real time processing'' for control law implementation;

b.2. Control law compensation for sensor location or dynamic airframe loads, *i.e.,* compensation for sensor vibration environment or for variation of sensor location from the center of gravity;

b.3. Electronic management of data redundancy or systems redundancy for fault detection, fault tolerance, fault isolation or reconfiguration;

Note: 7E004.b.3. does not control ''technology'' for the design of physical redundancy.

b.4. Flight controls that permit inflight reconfiguration of force and moment controls for real time autonomous air vehicle control;

b.5. Integration of digital flight control, navigation and propulsion control data, into a digital flight management system for ''total control of flight'';

Note: 7E004.b.5 does not control:

1. ''Development'' ''technology'' for integration of digital flight control, navigation and propulsion control data, into a digital flight management system for ''flight path optimization'';

2. ''Development'' ''technology'' for ''aircraft'' flight instrument systems integrated solely for VOR, DME, ILS or MLS navigation or approaches.

b.6. Full authority digital flight control or multisensor mission management systems, employing ''expert systems'';

N.B.: For ''technology'' for Full Authority Digital Engine Control (''FADEC''), *see* 9E003.a.9.

c. ''Technology'' for the ''development'' of helicopter systems, as follows:

c.1. Multi-axis fly-by-wire or fly-by-light controllers, which combine the functions of at least two of the following into one controlling element:

c.1.a. Collective controls;

c.1.b. Cyclic controls;

c.1.c. Yaw controls;

c.2. ''Circulation-controlled anti-torque or circulation-controlled directional control systems'';

c.3. Rotor blades incorporating ''variable geometry airfoils'', for use in systems using individual blade control.

■ 55. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 8, ECCN 8B001 is amended by revising the Heading, to read as follows:

8B001 Water tunnels having a background noise of less than 100 dB (reference 1 μPa, 1 Hz) in the frequency range from 0 to 500 Hz and designed for measuring acoustic fields generated by a hydro-flow around propulsion system models.

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■ 56. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 8, ECCN 8C001 is amended by revising the Heading and Related Definitions paragraph in the List of Items Controlled section, to read as follows:

8C001 'Syntactic foam' designed for underwater use and having all of the following (*see* List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Definition: 'Syntactic foam' consists of hollow spheres of plastic or glass embedded in a resin matrix.

* * * * *

■ 57. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 8, ECCN 8D001 is amended by revising the Heading to read as follows:

8D001 ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment or materials, controlled by 8A (except 8A018 or 8A992), 8B or 8C.

* * * * *

■ 58. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 8, ECCN 8E001 is amended by revising the Heading to read as follows:

8E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment or materials, controlled by 8A (except 8A018 or 8A992), 8B or 8C.

* * * * *

■ 59. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 8, ECCN 8E002 is amended by revising the Heading to read as follows:

8E002 Other ''technology'' as follows (*see* List of Items Controlled).

* * * * *

■ 60. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9 Aerospace and Propulsion is amended by revising the Nota Bene at the top of Product Group A to read as follows:

A. Systems, Equipment and Components

N.B.: *For propulsion systems designed or rated against neutron or transient ionizing radiation, see the U.S. Munitions List, 22 CFR part 121.*

■ 61. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9A001 is amended by revising the Items paragraph in the List of Items Controlled section, to read as follows:

9A001 Aero gas turbine engines incorporating any of the ''technologies'' controlled by 9E003.a, as follows (*See* List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. Incorporating any of the technologies controlled by 9E003.a.; or

Note: 9A001.a. does not control aero gas turbine engines which meet all of the following:

a. Certified by the civil aviation authority in a country listed in Supplement No. 1 to Part 743; and

b. Intended to power non-military manned aircraft for which any of the following has been issued by a Participating State listed in Supplement No. 1 to Part 743 for the aircraft with this specific engine type:

b.1. A civil type certificate; *or*

b.2. An equivalent document recognized by the International Civil Aviation Organization (ICAO).

b. Designed to power an aircraft designed to cruise at Mach 1 or higher, for more than 30 minutes.

■ 62. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9A002 is amended by revising the Heading and Related Definitions paragraph of the List of Items Controlled section, to read as follows:

9A002 'Marine gas turbine engines' with an ISO standard continuous power rating of 24,245 kW or more and a specific fuel consumption not exceeding 0.219 kg/kWh in the power range from 35 to 100%, and specially designed assemblies and components therefor.

* * * * *

List of Items Controlled

* * * * *

Related Definition: The term 'marine gas turbine engines' includes those industrial, or aero-derivative, gas turbine engines adapted for a ship's electric power generation or propulsion.

* * * * *

■ 63. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9A003 is amended by revising the Heading and the Items paragraph in the List of Items Controlled section, to read as follows:

9A003 Specially designed assemblies and components, incorporating any of the ''technologies'' controlled by 9E003.a, for gas turbine engine propulsion systems and having any of the following (*see* List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. Controlled by 9A001; *or*

b. Whose design or production origins are either countries in Country Group D:1 or unknown to the manufacturer.

■ 64. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9A005 is amended by revising the Heading to read as follows:

9A005 Liquid rocket propulsion systems containing any of the systems or components, controlled by 9A006. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. *See* 22 CFR part 121).

■ 65. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9A006 is amended by revising the Heading to read as follows:

9A006 Systems and components, specially designed for liquid rocket propulsion systems. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. *See* 22 CFR part 121).

■ 66. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9A010 is amended by revising the Heading to read as follows:

9A010 Specially designed components, systems and structures, for launch vehicles, launch vehicle propulsion systems or ''spacecraft''. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. *See* 22 CFR part 121).

■ 67. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9A011 is amended by revising the Heading to read as follows:

9A011 Ramjet, scramjet or combined cycle engines, and specially designed components therefor. (These items are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. *See* 22 CFR part 121).

■ 68. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9B001 is amended by revising the Heading to read as follows:

9B001 Equipment, tooling and fixtures, specially designed for manufacturing gas turbine blades, vanes or tip shroud castings, as follows (*See* List of Items Controlled).

* * * * *

■ 69. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9B002 is amended by revising the Heading, to read as follows:

9B002 On-line (real time) control systems, instrumentation (including sensors) or automated data acquisition and processing equipment, specially designed for the ''development'' of gas turbine engines, assemblies or components and incorporating ''technologies'' controlled by 9E003.a.

* * * * *

■ 70. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9B003 is amended by revising the Heading, to read as follows:

9B003 Equipment specially designed for the ''production'' or test of gas turbine brush seals designed to operate at tip speeds exceeding 335 m/s and temperatures in excess of 773 K (500°C), and specially designed components or accessories therefor.

* * * * *

■ 71. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9 Aerospace and Propulsion, Export Control Classification Number 9B004 is amended by revising the Heading, to read as follows:

9B004 Tools, dies or fixtures, for the solid state joining of ''superalloy'', titanium or intermetallic airfoil-to-disk combinations described in 9E003.a.3 or 9E003.a.6 for gas turbines.

* * * * *

■ 72. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9B005 is amended by revising the Heading and the Items paragraph of the

List of Items Controlled section to read as follows:

9B005 On-line (real time) control systems, instrumentation (including sensors) or automated data acquisition and processing equipment, specially designed for use with any of the following (*see* List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. Wind tunnels designed for speeds of Mach 1.2 or more;

Note: 9B005.a does not control wind tunnels specially designed for educational purposes and having a 'test section size' (measured laterally) of less than 250 mm.

Technical Note: 'Test section size' in 9B005.a means the diameter of the circle, or the side of the square, or the longest side of the rectangle, at the largest test section location.

b. Devices for simulating flow-environments at speeds exceeding Mach 5, including hot-shot tunnels, plasma arc tunnels, shock tubes, shock tunnels, gas tunnels and light gas guns; or

c. Wind tunnels or devices, other than two-dimensional sections, capable of simulating Reynolds number flows exceeding 25×10^6.

■ 73. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9B007 is amended by revising the Heading, to read as follows:

9B007 Equipment specially designed for inspecting the integrity of rocket motors and using Non-Destructive Test (NDT) techniques other than planar x-ray or basic physical or chemical analysis.

* * * * *

■ 74. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9B009 is amended by revising the Heading, to read as follows:

9B009 Tooling specially designed for producing turbine engine powder metallurgy rotor components capable of operating at stress levels of 60% of Ultimate Tensile Strength (UTS) or more and metal temperatures of 873 K (600°C) or more.

* * * * *

■ 75. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9B010 is amended by revising the Heading to read as follows:

9B010 Equipment specially designed for the production of ''UAVs'' and associated systems, equipment and components, controlled by 9A012.

* * * * *

■ 76. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9D001 is amended by revising the Heading, to read as follows:

9D001 Software'' specially designed or modified for the ''development'' of equipment or ''technology'', controlled by 9A (except 9A018, 9A990 or 9A991), 9B (except 9B990 or 9B991) or 9E003.

* * * * *

■ 77. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9D003 is amended by revising the Heading to read as follows:

9D003 Software'' specially designed or modified for the ''use'' of ''Full Authority Digital Electronic Engine Controls'' (FADEC) for propulsion systems controlled by 9A (except 9A018, 9A990 or 9A991) or equipment controlled by 9B (except 9B990 or 9B991), as follows (*see* List of Items Controlled).

* * * * *

■ 78. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9D004 is amended by revising the Heading and the Items paragraph of the List of Items Controlled section to read as follows:

9D004 Other ''software'' as follows (*see* List of Items Controlled).

* * * * *

List of Items Controlled

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Items:

a. 2D or 3D viscous ''software'', validated with wind tunnel or flight test data required for detailed engine flow modelling;

b. ''Software'' for testing aero gas turbine engines, assemblies or components, specially designed to collect, reduce and analyze data in real time and capable of feedback control, including the dynamic adjustment of test articles or test conditions, as the test is in progress;

c. ''Software'' specially designed to control directional solidification or single crystal casting;

d. ''Software'' in ''source code'', ''object code'' or machine code, required for the ''use'' of active compensating systems for rotor blade tip clearance control;

Note: 9D004.d does not control ''software'' embedded in equipment not controlled in the Commerce Control List (Supplement No. 1 to Part 774) or required for maintenance activities associated with the calibration or repair or updates to the active compensating clearance control system.

e. ''Software'' specially designed or modified for the ''use'' of ''UAVs'' and associated systems, equipment and components, controlled by 9A012;

f. ''Software'' specially designed to design the internal cooling passages of aero gas turbine engine blades, vanes and tip shrouds;

g. ''Software'' having all of the following:

g.1. Specially designed to predict aero thermal, aeromechanical and combustion conditions in aero gas turbine engines; and

g.2. Theoretical modeling predictions of the aero thermal, aeromechanical and combustion conditions, which have been validated with actual turbine engine (experimental or production) performance data.

79. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9 Aerospace and Propulsion, Product Group E is amended by revising the Note located at the beginning to read as follows:

E. Technology

Note: ''Development'' or ''production'' ''technology'' controlled by 9E001 to 9E003 for gas turbine engines remains controlled when used as ''use'' ''technology'' for repair, rebuild and overhaul. Excluded from 9E001 to 9E003 control are: technical data, drawings or documentation for maintenance activities directly associated with calibration, removal or replacement of damaged or unserviceable line replaceable units, including replacement of whole engines or engine modules.

* * * * *

■ 80. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9E001 is amended by revising the Heading and the Related Definitions paragraph of the List of Items Controlled section to read as follows:

9E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment or ''software'', controlled by 9A001.b, 9A004 to 9A012, 9B (except 9B990 or 9B991), or 9D (except 9D990 or 9D991)

* * * * *

List of Items Controlled

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Related Definitions: N/A.

* * * * *

■ 81. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9, ECCN 9E003 is amended by revising the Items paragraph of the List of Items Controlled section, to read as follows:

9E003 Other ''technology'' as follows (*see* List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. ''Technology'' ''required'' for the ''development'' or ''production'' of any of the following gas turbine engine components or systems:

a.1. Gas turbine blades, vanes or tip shrouds, made from directionally solidified (DS) or single crystal (SC) alloys and having (in the 001 Miller Index Direction) a stress-rupture life exceeding 400 hours at 1,273 K (1,000 °C) at a stress of 200 MPa, based on the average property values;

a.2. Multiple domed combustors operating at average burner outlet temperatures exceeding 1,813 K (1,540 °C) or combustors incorporating thermally decoupled combustion liners, non-metallic liners or non-metallic shells;

a.3. Components manufactured from any of the following:

a.3.a. Organic ''composite'' materials designed to operate above 588 K (315 °C);

a.3.b. Metal ''matrix'' ''composite'', ceramic ''matrix'', intermetallic or intermetallic reinforced materials, controlled by 1C007; or

a.3.c. ''Composite'' material controlled by 1C010 and manufactured with resins controlled by 1C008;

a.4. Uncooled turbine blades, vanes, tip-shrouds or other components, designed to operate at gas path total (stagnation) temperatures of 1,323 K (1,050 °C) or more at sea-level static take-off (ISA) in a ''steady state mode'' of engine operation;

a.5. Cooled turbine blades, vanes or tip-shrouds, other than those described in 9E003.a.1, exposed to gas path total (stagnation) temperatures of 1,643 K (1,370 °C) or more at sea-level static take-off (ISA) in a 'steady state mode' of engine operation;

Technical Note: The term 'steady state mode' defines engine operation conditions, where the engine parameters, such as thrust/power, rpm and others, have no appreciable fluctuations, when the ambient air temperature and pressure at the engine inlet are constant.

a.6. Airfoil-to-disk blade combinations using solid state joining;

a.7. Gas turbine engine components using ''diffusion bonding'' ''technology'' controlled by 2E003.b;

a.8. Damage tolerant gas turbine engine rotating components using powder metallurgy materials controlled by 1C002.b;

a.9. Full authority digital electronic engine control (FADEC) for gas turbine and combined cycle engines and their related diagnostic components, sensors and specially designed components;

a.10. Adjustable flow path geometry and associated control systems for:

a.10.a. Gas generator turbines;

a.10.b. Fan or power turbines;

a.10.c. Propelling nozzles; or

Note 1: Adjustable flow path geometry and associated control systems in 9E003.a.10 do not include inlet guide vanes, variable pitch fans, variable stators or bleed valves, for compressors.

Note 2: 9E003.a.10 does not control ''development'' or ''production'' ''technology'' for adjustable flow path geometry for reverse thrust.

a.11. Hollow fan blades;

b. ''Technology'' ''required'' for the ''development'' or ''production'' of any of the following:

b.1. Wind tunnel aero-models equipped with non-intrusive sensors capable of transmitting data from the sensors to the data acquisition system; or

b.2. ''Composite'' propeller blades or propfans, capable of absorbing more than 2,000 kW at flight speeds exceeding Mach 0.55;

c. ''Technology'' ''required'' for the ''development'' or ''production'' of gas turbine engine components using ''laser'', water jet, Electro-Chemical Machining (ECM) or Electrical Discharge Machines (EDM) hole drilling processes to produce holes having any of the following:

c.1. All of the following:

c.1.a. Depths more than four times their diameter;

c.1.b. Diameters less than 0.76 mm; and

c.1.c. 'Incidence angles' equal to or less than 25°; or

c.2. All of the following:

c.2.a. Depths more than five times their diameter;

c.2.b. Diameters less than 0.4 mm; and

c.2.c. 'Incidence angles' of more than 25°;

Technical Note: For the purposes of 9E003.c, 'incidence angle' is measured from a plane tangential to the airfoil surface at the point where the hole axis enters the airfoil surface.

d. ''Technology'' ''required'' for the ''development'' or ''production'' of helicopter power transfer systems or tilt rotor or tilt wing ''aircraft'' power transfer systems;

e. ''Technology'' for the ''development'' or ''production'' of reciprocating diesel engine ground vehicle propulsion systems having all of the following:

e.1. 'Box volume' of 1.2 m^3 or less;

e.2. An overall power output of more than 750 kW based on 80/1269/EEC, ISO 2534 or national equivalents; *and*

e.3. Power density of more than 700 kW/m^3 of 'box volume';

Technical Note: 'Box volume' is the product of three perpendicular dimensions measured in the following way:

Length: The length of the crankshaft from front flange to flywheel face;

Width: The widest of any of the following:

a. The outside dimension from valve cover to valve cover;

b. The dimensions of the outside edges of the cylinder heads; or

c. The diameter of the flywheel housing;

Height: The largest of any of the following:

a. The dimension of the crankshaft centerline to the top plane of the valve cover (or cylinder head) plus twice the stroke; or

b. The diameter of the flywheel housing.

f. ''Technology'' ''required'' for the ''production'' of specially designed components for high output diesel engines, as follows:

f.1. ''Technology'' ''required'' for the ''production'' of engine systems having all of the following components employing ceramics materials controlled by 1C007:

f.1.a Cylinder liners;

f.1.b. Pistons;

f.1.c. Cylinder heads; *and*

f.1.d. One or more other components (including exhaust ports, turbochargers, valve guides, valve assemblies or insulated fuel injectors);

f.2. ''Technology'' ''required'' for the ''production'' of turbocharger systems with single-stage compressors and having all of the following:

f.2.a. Operating at pressure ratios of 4:1 or higher;

f.2.b. Mass flow in the range from 30 to 130 kg per minute; *and*

f.2.c. Variable flow area capability within the compressor or turbine sections;

f.3. ''Technology'' ''required'' for the ''production'' of fuel injection systems with a specially designed multifuel (*e.g.,* diesel or jet fuel) capability covering a viscosity range from diesel fuel (2.5 cSt at 310.8 K (37.8°C)) down to gasoline fuel (0.5 cSt at 310.8 K (37.8°C)) and having all of the following:

f.3.a. Injection amount in excess of 230 mm^3 per injection per cylinder; and

f.3.b. Electronic control features specially designed for switching governor characteristics automatically depending on fuel property to provide the same torque characteristics by using the appropriate sensors;

g. ''Technology'' ''required'' for the development'' or ''production'' of 'high output diesel engines' for solid, gas phase or liquid film (or combinations thereof) cylinder wall lubrication and permitting operation to temperatures exceeding 723 K (450°C), measured on the cylinder wall at the top limit of travel of the top ring of the piston;

Technical Note: 'High output diesel engines' are diesel engines with a specified brake mean effective pressure of 1.8 MPa or more at a speed of 2,300 r.p.m., provided the rated speed is 2,300 r.p.m. or more.

h. ''Technology'' not otherwise controlled in 9E003.a.1 through a.10 and currently used in the ''development'', ''production'', or overhaul of hot section parts and components of civil derivatives of military engines controlled on the U.S. Munitions List.

Dated: November 30, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 955/P.L. 111–99

To designate the facility of the United States Postal Service located at 10355 Northeast Valley Road in Rollingbay, Washington, as the ''John 'Bud' Hawk Post Office''. (Nov. 30, 2009; 123 Stat. 3011)

H.R. 1516/P.L. 111–100

To designate the facility of the United States Postal Service located at 37926 Church Street in Dade City, Florida, as the ''Sergeant Marcus Mathes Post Office''. (Nov. 30, 2009; 123 Stat. 3012)

H.R. 1713/P.L. 111–101

To name the South Central Agricultural Research Laboratory of the Department of Agriculture in Lane, Oklahoma, and the facility of the United States Postal Service located at 310 North Perry Street in Bennington, Oklahoma, in honor of former Congressman Wesley ''Wes'' Watkins. (Nov. 30, 2009; 123 Stat. 3013)

H.R. 2004/P.L. 111–102

To designate the facility of the United States Postal Service located at 4282 Beach Street in Akron, Michigan, as the ''Akron Veterans Memorial Post Office''. (Nov. 30, 2009; 123 Stat. 3014)

H.R. 2215/P.L. 111–103

To designate the facility of the United States Postal Service located at 140 Merriman Road in Garden City, Michigan, as the ''John J. Shivnen Post Office Building''. (Nov. 30, 2009; 123 Stat. 3015)

H.R. 2760/P.L. 111–104

To designate the facility of the United States Postal Service located at 1615 North Wilcox Avenue in Los Angeles, California, as the ''Johnny Grant Hollywood Post Office Building''. (Nov. 30, 2009; 123 Stat. 3016)

H.R. 2972/P.L. 111–105

To designate the facility of the United States Postal Service located at 115 West Edward Street in Erath, Louisiana, as the ''Conrad DeRouen, Jr. Post Office''. (Nov. 30, 2009; 123 Stat. 3017)

H.R. 3119/P.L. 111–106

To designate the facility of the United States Postal Service located at 867 Stockton Street in San Francisco, California, as the ''Lim Poon Lee Post Office''. (Nov. 30, 2009; 123 Stat. 3018)

H.R. 3386/P.L. 111–107

To designate the facility of the United States Postal Service located at 1165 2nd Avenue in Des Moines, Iowa, as the ''Iraq and Afghanistan Veterans Memorial Post Office''. (Nov. 30, 2009; 123 Stat. 3019)

H.R. 3547/P.L. 111–108

To designate the facility of the United States Postal Service located at 936 South 250 East in Provo, Utah, as the ''Rex E. Lee Post Office Building''. (Nov. 30, 2009; 123 Stat. 3020)

S. 748/P.L. 111–109

To redesignate the facility of the United States Postal Service located at 2777 Logan Avenue in San Diego, California, as the ''Cesar E. Chavez Post Office''. (Nov. 30, 2009; 123 Stat. 3021)

S. 1211/P.L. 111–110

To designate the facility of the United States Postal Service located at 60 School Street, Orchard Park, New York, as the ''Jack F. Kemp Post Office Building''. (Nov. 30, 2009; 123 Stat. 3022)

S. 1314/P.L. 111–111

To designate the facility of the United States Postal Service located at 630 Northeast Killingsworth Avenue in Portland, Oregon, as the ''Dr. Martin Luther King, Jr. Post Office''. (Nov. 30, 2009; 123 Stat. 3023)

S. 1825/P.L. 111–112

To extend the authority for relocation expenses test programs for Federal employees, and for other purposes. (Nov. 30, 2009; 123 Stat. 3024)

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